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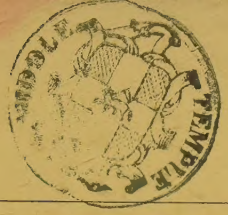

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NINTH EDITION

EDITED BY

HARRY GREENWOOD, M.A., LL.D.,

OF PEMBROKE COLLEGE, CAMBRIDGE, AND LINCOLN'S INN, ESQ.,
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PREFACE

TO THE NINTH EDITION.

As this edition is passing through the press, it appears probable that the Land Transfer Bill may pass into law during the present year. That it will be considerably amended may be confidently expected, and it is, of course, impossible to say in what precise form it may ultimately pass. But it seems clear that it will not, at first, effect any great changes in the practice of Conveyancing. At present, it is proposed that it shall come into operation on the 1st of January, 1898. If this should be the case, and if Part I. of the Bill is not materially altered, it will be impossible, after the end of the present year, to devise the legal estate in freehold land. It will vest—as leaseholds and trust and mortgage estates now do—in the legal personal representative of the person who dies seised of it, instead of in his heir or devisee. The heir-at-law of an intestate will have

as much right as the next of kin to a grant of letters of administration. The legal personal representative may assent to any devise of real estate, just as he may now assent to a bequest of leaseholds. Or he may convey the land to any person entitled thereto as heir, devisee, or otherwise. These provisions will (if the Bill passes) take effect on the 1st of January, 1898, as to all freehold land in England, but copyhold land is excluded from their operation.

The Bill, as now framed, gives power by Order in Council to make registration of title compulsory, subject to the following provisions:—

(a) The first Order is not to affect more than one county.

(b) No further Order is to be made for three years, except at the request of a County Council.

(c) Before any Order is made, six months' notice is to be given to the County Council of the county to which the Order is intended to apply, and the County Council has power within three months, by a specified majority, to pass a resolution which, if communicated to the Privy Council, will prevent the making of the Order.

(d) Land in any county, where registration has been made compulsory, must be brought on the register on the occasion of the next sale, or the legal estate will not pass to the purchaser.

The result appears to be that, if the Bill should pass, registration of title cannot be made compulsory till towards the end of 1898, and can then be made compulsory only in one county. It is not unlikely that the first experiment will be made in Yorkshire; and, if this be so, there will be no compulsory registration in any other part of England till 1901 or 1902—if at all.

The present practice of Conveyancing will, therefore, not be superseded for many years to come, although it will be considerably modified and improved if Lord Davey's Conveyancing Bill should pass into law.

No attempt has been made to adapt the present edition to possible future changes in the law, but both text and precedents have been carefully revised, and various alterations and additions have been made.

Several new forms have been added, and all the old forms have been resettled. The use of

numbered paragraphs and marginal notes has been extended. Instead of the "Isolated Forms" printed together at the end of the last edition, a number of recitals and special conditions and other alternative forms will be found among the notes to the complete forms of Conveyances, Conditions of Sale, and other instruments.

My thanks are due to many friends for valuable suggestions, especially to Mr. Charles Edwards and Mr. R. E. Weatherhead, and an anonymous correspondent who writes from Manchester.

The Table of Cases has been prepared by my son.

H. GREENWOOD.

4, New Square, Lincoln's Inn.
July, 1897.

PREFACE

TO THE FIRST EDITION.

In bringing before the profession an experience of many years in the practice of Conveyancing, my principal endeavour has been to produce such a book as may be of service to Articled and other Clerks in the profession, who may sometimes feel the want of a simple guide to enable them to perform, with comparative ease and credit to themselves, such portions of Conveyancing business as may be intrusted to them. I need hardly say, that I have no intention of intruding my experience on those members of the profession who are now in practice, or the numerous gentlemen engaged in the profession, who, instead of requiring help of this description, could afford help and assistance to others, much better than I have done. This book is not intended to be anything more than a manual for those who, from want of experience, feel some difficulty, either at the commencement or during the progress of ordinary Conveyancing business. I have endeavoured to make the book so simple, that a Solicitor may with confidence intrust small matters of business to Articled and other Clerks to proceed upon, and submit to him from time to time. Whether I am deceived in my expectations as to the utility of my performance, or as to my own capacity in undertaking it, I must leave others to judge; in writing it I have not trespassed on the preserves of others in any one particular, but have contented myself with a simple statement of the strictly practical part of Conveyancing as followed at the present day.

London, *February*, 1856.

CONTENTS.

PART I.

CHAPTER I.

AGREEMENTS.

	PAGE
Introductory	1
Instructions	2
Preparation of Draft	4
Completion	7
Stamps	8

CHAPTER II.

SALES OF REAL ESTATE.

Introductory	10
Open Contract	10
Private Contract:	
Preliminary	15
Preparation of Draft	19
Public Auction:	
Preliminary	21
Particulars	22
Conditions	24
Sale	29
Abstract of Title	30
Replies to Requisitions	31
Draft Conveyance	35
Completion	37
Interest	38
Generally	40

CHAPTER III.

Purchases of Real Estate.

PAGE

Introductory - - - - - - - - - 43
Open Contract - - - - - - - - - 44
Private Contract:
Contract by Letters - - - - - - - 45
Generally - - - - - - - - - 47
Public Auction:
Conditions of Sale - - - - - - - 49
Verifying Abstract - - - - - - - - 52
Perusing Abstract - - - - - - - - 56
Requisitions and Replies - - - - - - - 60
Searches - - - - - - - - - 63
Preparation of Conveyance - - - - - - - 64
Approval of Draft - - - - - - - - 75
Engrossment of Conveyance - - - - - - - 76
Completion - - - - - - - - - 77

CHAPTER IV.

Mortgages.

Acting for Mortgagor - - - - - - - - 79
Acting for Mortgagee - - - - - - - - 81
Lending Trust Money - - - - - - - - 89
Preparation of Draft - - - - - - - - 94
Completion - - - - - - - - - 100
Insurance - - - - - - - - - 101
Costs - - - - - - - - - 101
Reconveyance - - - - - - - - - 101
Costs on Reconveyance - - - - - - - - 102
Sale by Mortgagee - - - - - - - - 103
Transfers - - - - - - - - - 105
Stamps - - - - - - - - - 107

CHAPTER V.

LEASES.

PAGE

Introductory - - - - - - - - 108

PART I.—*Duties of Lessor's Solicitor.*

Power to lease :
- *Infant* - - - - - - - - 109
- *Married Woman* - - - - - - - 110
- *Settled Estates* - - - - - - - 110
- *Mortgagor* - - - - - - - 111
- *Mortgagee* - - - - - - - 112
- *Copyholds* - - - - - - - 113
- *Leaseholds* - - - - - - - 113

Preparation of Agreement - - - - - - 114
Preparation of Lease - - - - - - - 116
Completion - - - - - - - - 119
Costs - - - - - - - - - 120
Stamps - - - - - - - - 120

PART II.—*Duties of Lessee's Solicitor.*

Perusing Draft Lease - - - - - - - 121
Counterpart :
- *Engrossment* - - - - - - - 126

Completion - - - - - - - - 127
Registration - - - - - - - - 128
Stamps - - - - - - - - - 129

CHAPTER VI.

COPYHOLDS.

Copyhold Tenure - - - - - - - 130
Purchase :
- *Searches* - - - - - - - 132
- *Inquiries* - - - - - - - 132
- *Requisitions* - - - - - - - 134
- *Conveyance* - - - - - - - 136
- *Completion* - - - - - - - 139
- *Admittance* - - - - - - - 140

Mortgage :
- *Admittance* - - - - - - - 140

Fines - - - - - - - - - 141
Purchases by Corporations - - - - - - 142
Enfranchisement - - - - - - - 143

CHAPTER VII.

Partnership Deeds and Deeds of Dissolution.

Part I.—*Partnership Deeds.*

	PAGE
Acting for all Parties	146
Acting for one Partner	148
Acting for Firm	149
Acting for New Partner	149
Stamps	150

Part II.—*Deeds of Dissolution.*

Dissolution *Inter vivos*	150
Dissolution by Death	151

CHAPTER VIII.

Settlements.

Part I.—*Marriage Settlements.*

Introductory	154
Real Estate:	
Strict Settlement	154
Conversion and Division	157
Registration	158
Personal Estate:	
Cash	159
Stock	159
Shares	160
Bonds	160
Promissory Notes	160
Life Policy	160
Furniture	161
Mortgage Debt	162
Investment	162
Beneficial Trusts	162
Maintenance and Advancement	164
Miscellaneous Provisions	164
Notice of Settlement	167
Custody of Deeds	169

Part II.—*Voluntary Settlements.*

Voluntary Settlements	169
Stamps	171

CHAPTER IX.

Deeds under the Fines and Recoveries Abolition Act as amended by the Conveyancing Act, 1882.

Part I.—*Disentailing Deeds.*

PAGE
Disentailing Deeds - - - - - - - - 172
Stamps - - - - - - - - - - 174

Part II.—*Deeds by Married Women.*

Deeds by Married Women - - - - - - - 174
Separate Use - - - - - - - - 177

CHAPTER X.

Wills.

Introductory - - - - - - - - 180
Instructions - - - - - - - - - 180
Preparation of Draft - - - - - - - 183
Execution - - - - - - - - - 186

CHAPTER XI.

Disclaimers.

Introductory - - - - - - - - 187
Form of Deed - - - - - - - - - 187
Trustees of Copyholds - - - - - - - 188
Costs - - - - - - - - - - 188
Stamp - - - - - - - - - 188
Registration - - - - - - - - - 188

CHAPTER XII.

Probates and Letters of Administration.

Instructions - - - - - - - - 189
Small Estates - - - - - - - - 193
Proving a Will - - - - - - - - 194

CHAPTER XIII.

LEGACY AND SUCCESSION DUTIES.

PAGE

Introductory - - - - - - - - 197
Legacy Duty - - - - - - - - 198
Succession Duty - - - - - - - - 200

CHAPTER XIV.

ADMINISTRATION.

Acting before Probate - - - - - - 204
Administration Action - - - - - - - 204
Legacy Receipts and Releases - - - - - 205
Bequests of Leaseholds - - - - - - - 206
Rights of Widow - - - - - - - 206
Registration - - - - - - - 206
Advertisements for Creditors - - - - - - 206

PART II.

FORMS.

ADVERTISEMENTS.

1. Advertisement for Creditors by Executor under Lord St. Leonards' Act - - - - - - - - 207
2. Advertisement for Creditors by Administrator under Lord St. Leonards' Act - - - - - - - - 208

AFFIDAVITS.

3. Affidavit to accompany Notice in lieu of Distringas on Stock - 209
4. Affidavit on Registration of Bill of Sale (to secure money) - - 209
5. Affidavit of due Execution of Bill of Sale (not to secure money) 210
6. Affidavit of due Execution of Bill of Sale given by Sheriff - - 210
7. Affidavit on Re-registration of Bill of Sale - - - 211
8. Affidavit verifying Consent to Order for entering Satisfaction of Bill of Sale - - - - - - - - 211

AGREEMENTS.

PAGE

9. Agreement between Manufacturer and Son as to Services - 212
10. Agreement appointing Consulting Engineer of Colliery - - 215
11. Agreement appointing Certificated Resident Manager of Colliery 217
12. Agreement appointing Resident Manager of Fireclay Works - 220
13. Agreement appointing Manager of Bleaching Works - - 222
14. Agreement between a Brewer and his Collector - - - 224
15. Agreement between a Manufacturer and his Traveller - - 226
16. Agreement between Manufacturers and a Provincial Agent - 228
17. Agreement between Mineral Water Company and a Provincial *del credere* Agent - - - - - - - - 231
18. Agreement between Patentee of Railway Buffers and his Agent 233
19. Agreement for employment of Surveyor and Architect, and Occasional Clerk of Agent - - - - - 235
20. Agreement between Solicitor and Client as to Remuneration - 237
21. Agreement under Seal between Trustees and their Solicitor as to Remuneration for managing Trust Estate - - - - 239
22. Articles of Clerkship - - - - - - - 241
23. Apprenticeship Indenture - - - - - - - 242
24. Agreement for Production and Performance of Stage Play - 244
25. Agreement between Farmer and Milk Dealer for Supply of Milk 246
26. Agreement for Building an Organ - - - - - 247
27. Agreement (Determinable on Notice) for use by Railway Company of a Right of Way on Paying therefor a Yearly Sum - 248
28. Agreement for Releasing an Annuity charged on Real Estate - 248
29. Agreement for Reference of disputes to Arbitration - - 250
30. Agreement for Reference of an Action - - - - 251
31. Agreement for Hire of Furniture and Fittings of Hotel with Option of Purchase - - - - - - - 252
32. Agreement for Hire of Pottery, Plant, and Machinery with Option of Purchase - - - - - - - 255
33. Agreement for Hire of Trade Machinery with Option of Purchase - - - - - - - - - 257
34. Conditional Agreement for Sale of an Intestate's Share of Business to his Partners - - - - - - - 259
35. Agreement by Executrix and Creditors for Sale of Insolvent Testator's Business to his Manager - - - - - 261
36. Agreement for Lease or Underlease of a House (short Form) - 268
37. Agreement for a Mortgage with Special Stipulations - - 269
38. Agreement for Sale of a British Ship - - - - 271
39. Agreement by Letters for Sale of Land - - - - - 272
40. Open Concise Agreement for Sale of a Leasehold House - 273
41. Short Agreement for Sale of Land - - - - - 273
42. Agreement incorporating Conditions of Sale - - - - 274
43. Agreement for Sale indorsed on Draft Conveyance - - - 274
44. Agreement for Sale of a Freehold House (Short Form) - - 275
45. Agreement for Sale of a Leasehold House - - - - 276
46. Agreement for Sale by Trustees of a Freehold Farm (Full Form) 278
47. Agreement for Sale of Freeholds at a Perpetual Rent (Short Form) - - - - - - - - - 280

PAGE

48. Agreement for Sale by Mortgagor and Mortgagees of Freeholds at a Perpetual Rent - - - - - - 282
49. Agreement for Sale of Leasehold Manufactory and Stock-in-Trade - - - - - - - - 284

APPOINTMENTS.

50. Appointment of a Share of Residuary Estate - - - 288
51. Appointment of New Trustee of a Will under Express Power - 289
52. Appointment of New Trustee of a Settlement under Statutory Power - - - - - - - - 290
53. Appointment of Gamekeeper - - - - - 293
54. Appointment of two Surveyors under L. C. C. Acts - - 293
55. Acknowledgment as to Deeds (Concise Form) - - - 294
56. Assent to Bequest of Leaseholds - - - - - 294

BONDS.

57. Common Money Bond - - - - - - 295
58. Bond by Collector of a Brewery and his Sureties - - 295
59. Bond for replacing a Sum of Stock - - - - - 296
60. Memorandum of discharge of Bond - - - - - 297
61. Certificate of Acknowledgment of Deed by Married Woman - 298

CONDITIONS OF SALE.

62. Conditions of Sale—very short Form - - - - 299
63. Conditions of Sale of Freeholds in lots for building - - - 301
63A. "General Remarks" as to building, &c., to accompany Conditions of Sale - - - - - - - - 305
64. Conditions of Sale of Freeholds and Copyholds in lots (special stipulations) - - - - - - - - 310
65. Conditions of Sale of Freehold Ground Rents - - - 321
66. Conditions of Sale of Freehold House in Middlesex or Yorkshire - - - - - - - - - 323
67. Conditions of Sale of Leasehold House - - - - 331
68. Conditions of Sale of Leaseholds in two lots (short form) - - 334
69. Conditions of Sale of Leaseholds in lots under a Judgment of the Chancery Division - - - - - - 337
70. Particular and Conditions of Sale of Reversionary Life Interest in two Sums of Stock and a House by a Trustee in Bankruptcy 343

CONVEYANCES AND ASSIGNMENTS.

PAGE

71. Conveyance of Freehold Land by Owner in Fee Simple - - 346
72. Conveyance of Freehold Cottage with right to use a Pump - - 347
73. Conveyance of Freeholds by Indorsement - - - 349
74. Conveyance of Part of Freehold Farm, a Lessee joining - - 349
75. Conveyance of Freehold Farm by Tenant for Life under Settled Land Act, 1882 - - - - - - - 352
76. Conveyance by Appointment and Grant - - - - 354
77. Conveyance of Freeholds subject to a Rentcharge and Reservation of Minerals - - - - - - - 355
78. Conveyance in consideration of a Rentcharge subject to prior Rentcharge - - - - - - - - 357
79. Conveyance of Freeholds by Mortgagor and Mortgagee (a Building Society) - - - - - - - - 359
80. Conveyance by Mortgagor and Mortgagee, the Purchase-Money being paid to the Mortgagor - - - - - - 361
81. Conveyance of Freeholds by Mortgagee under express Power of Sale - - - - - - - - - 362
82. Conveyance of Freeholds by Executors of Mortgagee under express Power of Sale - - - - - - - 363
83. Conveyance of Freeholds by Mortgagee under Statutory Power - 366
84. Conveyance of Equity of Redemption of Freeholds (concise Form) - - - - - - - - - 366
85. Conveyance of Freeholds by Tenants in Common, with Covenant for future Conveyance by an Infant entitled to a Share - - 367
86. Conveyance to Uses of a Settlement - - - - - 369
87. Conveyance of Freeholds on Partition by separate Deeds - - 372
88. Conveyance of Freeholds on Partition by one Deed by Joint Tenants - - - - - - - - 373
89. Conveyance of Life Interest in Freeholds - - - - 374
90. Conveyance of Freehold Land for Burial Ground - - 376
91. Conveyance of Freeholds by Tenant for Life, under Settled Land Act, to a Burial Board - - - - - - - 377
92. Conveyance of Freeholds by Tenant for Life, under Settled Land Act, to District Council for Public Pleasure Ground - - 378
93. Conveyance of Freeholds to County Council under Local Government Act, 1888 - - - - - - - 379
94. Grant by Tenant for Life to District Council of right to construct and maintain Sewer in consideration of Perpetual Rentcharge - - - - - - - - 380
95. Grant to Municipal Council of right to lay and maintain Water-pipes - - - - - - - - - 382
96. Conveyance in Fee Simple by Municipal Corporation - - 385
97. Covenant to surrender Copyholds - - - - - 386
98. Surrender of Copyholds - - - - - - - 387
99. Surrender of Copyholds to Trustees of a Settlement - - 387
100. Deed of Covenants for Title to accompany Surrender - - 388
101. Conveyance of Freeholds and Covenant to surrender Copyholds 389
102. Deed of Enfranchisement - - - - - - - 390
103. Assignment of Leaseholds by independent Deed - - 392
104. Assignment of Leaseholds by Indorsement - - - - 393

PAGE

105. Assignment of Leaseholds by Mortgagor and Mortgagee - - 394
106. Assignment of Leaseholds by Mortgagee (by Assignment) under express Power of Sale - - - - - - 395
107. Assignment of Leaseholds by Mortgagee (by Demise) under Statutory Power - - - - - - - 397
108. Assignment of Leaseholds to be indorsed on Mortgage pursuant to Covenant for further Assurance - - - - 399
109. Assignment of a Moiety by Mortgagor to co-Mortgagor of the Equity of Redemption in Leaseholds - - - - 401
110. Assignment of a Policy of Assurance - - - - 402
111. Assignment of Reversionary Interest in Stock - - - 403
112. Assignment of Reversionary Interest in Residue and Policy by Mortgagee under Power of Sale - - - - - 405
113. Assignment of Business of a Watchmaker - - - 407
114. Assignment of Book Debts - - - - - - 408

DEEDS OF CONFIRMATION.

115. Confirmation of a Deed to which a Widow or a Spinster was a Party but who married before she executed it - - - 410
116. Confirmation by Married Women to be indorsed on Assignment of Leaseholds which by mistake had not been acknowledged - 410

DEEDS OF COVENANT.

117. Deed of Covenant to produce Deeds - - - - 413
118. Mutual Covenants by Purchasers of Building Land where it is intended Buildings shall be uniform - - - - 414
119. Deed of Covenant by Riparian Owners to preserve Rivers A. and W. and the water therein within certain limits pure and free from Rubbish - - - - - - - 417

DECLARATION.

120. Statutory Declaration verifying Notice of Dissolution of Partnership - - - - - - - - - 420

DISCLAIMERS.

121. Disclaimer of Trust of Will - - - - - - 421
122. Disclaimer of Trust of Will (Short Form) - - - 422
123. Disclaimer by Trustees of Copyholds in order that one only may take Admittance - - - - - - - 422

PAGE

124. DISENTAILING DEED by Tenant in Tail with Consent of Protector - - - - - - - 423

GUARANTEES.

125. Guarantee of Mortgage Debt - - - - - 425
126. Guarantee of Rent - - - - - - 426
127. Indemnity by Residuary Legatee on receipt of his Share - - 426

LEASES AND TENANCY AGREEMENTS.

128. Agreement for Tenancy of small House for Three Years - 427
129. Agreement for Tenancy of Furnished House - - - 427
130. Agreement for Tenancy of House for one Year - - - 428
131. Agreement for Tenancy of House for less than Three Years (Concise Form) - - - - - - - 430
132. Agreement for Weekly Tenancy of Cottage between Employer and Workman - - - - - - - 431
133. Lease of a House in a Town - - - - - 433
134. Lease of a House, Lessor insuring and doing outside Repairs - 437
135. Lease of a Public-house - - - - - 438
136. Agreement for Tenancy from Year to Year of Agricultural Land - - - - - - - - 441
137. Concise Terms of Farm Tenancy printed on back of Receipt for Rent - - - - - - - - 442
138. Lease of a small Farm from Year to Year - - - - 443
139. Lease of a Farm and Cottages in Yorkshire - - - 445
140. Conditions for letting Building Land in Lancashire for 999 Years - - - - - - - - 450
141. Building Lease with Reservation of Water in a Well - - 452
142. Tenancy Agreement of Cricket and Football Field - - - 459
143. Tenancy Agreement of Football Ground during Winter Season- 460
144. Licence to use Land for Golf - - - - - 463
145. Surrender of Lease by Indorsement - - - - 464
146. Agreement for determining Tenancy and settling Questions - 465
147. Agreement for Change of Tenancy - - - - 465
148. Extension of Lease by Indorsement - - - - 466
149. Renewal - - - - - - - 466

LICENCES.

150. Licence to assign Lease - - - - - - 467
151. Licence for Sale by Auction - - - - - 467

MORTGAGES.

PAGE

152. Short equitable Mortgage with Declaration of Trusteeship - 468
153. Agreement to execute Mortgage (indorsed on draft Mortgage) - 468
154. Mortgage of Freehold Houses to one Mortgagee - - 469
155. Mortgage of Freeholds (Short Form) - - - - 472
156. Mortgage under the Conveyancing Act, 1881 - - - 472
157. Deed of Covenant to accompany Conditional Surrender of Copyholds - - - - - - - - 473
158. Conditional Surrender of Copyholds - - - - 474
159. Warrant to enter Satisfaction of Conditional Surrender - - 474
160. Mortgage of Leaseholds by Demise - - - - 475
161. Mortgage of Leaseholds to a Building Society - - - 476
162. Further Charge to a Building Society - - - - 480
163. Memorandum of Deposit of Deeds with a Bank - - - 481
164. Mortgage of Life Policy by Indorsement - - - 482
165. Mortgage of Reversionary Interest in a Sum of Consols - - 483
166. Mortgage of Public-house to a Brewery Company - - 486
167. Transfer of Mortgage of Freeholds - - - - - 490
168. Reconveyance of Freeholds by Indorsement - - - 491

NOTICES.

169. Notice of desire to determine Partnership - - - - 492
170. Notice of Dissolution of Partnership - - - - 492
171. Notice for London Gazette to be given on behalf of retiring Partners - - - - - - - - 492
172. Notice to High Bailiff that Trustees claim Furniture - - 493
173. Letter to accompany preceding Form - - - - 493
174. Notice as to Stock under R. S. C., Ord. XLVI. - - - 494
175. Notice to Quit, from Landlord to Tenant - - - - 494
176. Notice to Quit, and for Double Rent - - - - 495
177. Notice to Quit, from Tenant to Landlord - - - - 496
178. Notice by Lessor (or Lessee) of desire to determine Lease - 496
179. Notice to Lessee to abate Nuisance - - - - - 496
180. Notice to Lessee to repair according to Covenant - - 497
181. Notice under § 14 of C. A. 1881, of breach of Covenant to repair 497
182. Notice of Assignment of Life Policy - - - - 498
183. Notice to Trustees by Mortgagee of Mortgage of Legacy - 498
184. Notice by Second Mortgagee to First Mortgagee - - - 499
185. Notice by Mortgagee to Tenant to pay Rent to him - - 499
186. Notice of intended Sale by Mortgagee - - - - 499
187. Notice by Mortgagor of intention to pay off - - - 500

PARTNERSHIP.

PAGE
188. Partnership Agreement between three Persons - - - 501
189. Partnership Deed between two Traders, with usual Clauses - - 503
190. Deed of Dissolution by Indorsement - - - - 509

POWERS OF ATTORNEY.

191. Power of Attorney to execute a Deed - - - - 511
192. Power of Attorney under General Inclosure Act - - 512
193. Power of Attorney to recover a Debt - - - - 512
194. General Power of Attorney to manage a Merchant's Business - 512
195. Presentation to a Benefice - - - - - - 514

RELEASES.

196. Release from Covenant in a Lease - - - - 515
197. Release of Dower - - - - - - - 515
198. Release to Executors by Residuary Legatee - - - 516
199. Release to Trustees of a Settlement - - - - - 517
200. Release of Covenant for Production - - - - 519

REQUESTS.

201. Request by *Cestuis que Trustent* to Trustees to sell out Stock for a Loan - - - - - - - - - 520
202. Request to register Stock - - - - - 520

SETTLEMENTS.

203. Settlement, on Marriage, of Husband's Real Estate - - 521
204. Settlement, on Marriage, of Personalty - - - - 522

WILLS.

205. Will giving all Testator's Property to his Wife - - - 527
206. Short Form of Will for Case of Emergency - - - 527
207. Will of a Widower, containing specific Devises, and giving Residue to Children - - - - - - - 528
208. Will of Married Man in favour of Family, with special Clauses - 529

PAGE

209. Will of Married Man giving Annuity to Wife and settling Residue on Daughters and their Families - - - - 538
210. Will of Married Man in favour of Wife and Children - - 541
211. Will of a Scotchman domiciled in England in favour of Family, Shares of Children being payable at Twenty-five - - - 543
212. Will of Married Man in favour of Family, Wife taking a Life Interest in Part of Residue only - - - - 545
213. Will of a Spinster giving Charitable and other Legacies, and Income of Residue to Two successive Tenants for Life - - 547
214. Testamentary Appointment of Settled Trust Funds - - 549

APPENDIX.

Instructions for Execution of a Deed - - - - - 551
Testimonium to Instrument executed by Attorney - - - 551
Preparation and Expense of Documents - - - - - 552

INDEX - - - - - - - - - 553

TABLE OF CASES.

PAGE

Adams' Policy, Re, 23 Ch. D. 525; 31 W. R. 810; 52 L. J. (Ch.) 642; 48 L. T. 727 - - - - - - 161

Aldin *v.* Latimer, 38 S. J. 458; (1894) 2 Ch. 437; 63 L. J. (Ch.) 601; 71 L. T. 119; 42 W. R. 553 - - - - 20

Aldridge *v.* Ferne, 17 Q. B. D. 212; 34 W. R. 578 - - - 116

Ashburner *v.* Sewell, (1891) 3 Ch. 405; 60 L. J. (Ch.) 784; 40 W. R. 481 - - - - - - 33, 61

Atherton, Re, W. N. (1891) 85 - - - - - 16

Att.-Gen. *v.* Biphosphate Guano Co., 26 W. R. 533; 38 L. T. 941 - 414

Ayres, Re, 8 P. D. 168 - - - - - - 71

Bannerman *v.* Clarke, 3 Drew. 362; 26 L. J. (Ch.) 77 - - 39

Bannister, Re, Broad *v.* Munton, 12 Ch. D. 131; 27 W. R. 547; 40 L. T. 319 - - - - - - - 51

Bawden, Re, (1894) 1 Ch. 693; 63 L. J. (Ch.) 412; 70 L. T. 526; 42 W. R. 235 - - - - - - - 184

Beardman *v.* Wilson, L. R. 4 C. P. 57 - - - - 119

Bebb *v.* Bunny, 1 K. & J. 216 - - - - 38, 78

Beckett *v.* Tower Assets Co., Limited, (1891) 1 Q. B. 1 - - 258

Bellamy, Re, 24 Ch. D. 387; 31 W. R. 900; 48 L. T. 801 - - 39

Bellamy *v.* Debenham, 45 Ch. D. 481; (1891) 1 Ch. 413; 60 L. J. (Ch.) 166 - - - - - - - 45, 46

Best *v.* Hamand, 12 Ch. D. 1; 27 W. R. 742; 48 L. J. (Ch.) 503; 40 L. T. 769 - - - - - - - - 51

Bettesworth and Richer, Re, 37 Ch. D. 535 - - - - 63

Beyfus and Masters, Re, 39 Ch. D. 110; 59 L. T. 740 - - 23

Birmingham Land Co. *v.* Allday, (1893) 1 Ch. 342; 41 W. R. 189 27

Blackmur *v.* Blackmur, 3 Ch. D. 633 - - - 175, 298

Bolton *v.* Lambert, 41 Ch. D. 295; 37 W. R. 236 - - - 46

Bolton *v.* London School Board, 7 Ch. D. 766; 26 W. R. 549; 47 L. J. (Ch.) 461; 38 L. T. 277 - - - - - - 11

Bonnewell *v.* Jenkins, 8 Ch. D. 229; 26 W. R. 294; 47 L. J. (Ch.) 758; 38 L. T. 381 - - - - - - - 46

Bosworth, Re, 52 L. J. (Ch.) 432 - - - - - - 205

Bowker *v.* Austin, Re Lawrance, (1894) 1 Ch. 557; 42 W. R. 265 - - - - - - - - 169, 552

Bracken, Re, 43 Ch. D. 1; 37 W. R. Dig. 79; 60 L. T. 628 - 206, 207

Bristol, &c. Aerated Bread Co. *v.* Maggs, 44 Ch. D. 616; 38 W. R. 393 - - - - - - - - - 46

PAGE

Brooke, Re, (1894) 2 Ch. 600; 64 L. J. (Ch.) 21; 71 L. T. 398 - 86
Brooks, Ex parte, 23 Ch. D. 261; 31 W. R. 833 - - - 252
Brumbridge *v.* Massey, 32 L. T. 108 - - - - - 93
Brumfit *v.* Morton, 3 Jur. (N. S.) 1198; 6 W. R. Dig. 83; 30 L. T. 98 - - - - - - - - 23
Buck, Re, (1896) 2 Ch. 727; 65 L. J. (Ch.) 881; 75 L. T. 312; 45 W. R. 106 - - - - - - - 184
Burd *v.* Burd, 40 Ch. D. 628; 58 L. J. (Ch.) 170; 60 L. T. 228; 37 W. R. 428 - - - - - - - 22
Byrne, Ex parte, 20 Q. B. D. 310; 36 W. R. 345; 57 L. J. (Q. B.) 263; 58 L. T. 710 - - - - - 87, 258

Calvert *v.* Sebright, 16 Beav. 156 - - - - - - 76
Camberwell Benefit Building Society *v.* Holloway, 13 Ch. D. 754; 28 W. R. 222; 49 L. J. (Ch.) 361; 41 L. T. 752 - - - 23
Cardigan *v.* Curzon-Howe, 40 Ch. D. 338; 41 Ch. D. 375; 58 L. J. (Ch.) 436; 60 L. T. 723; 37 W. R. 521 - - - 17
Cartwright *v.* Regan, (1895) 1 Q. B. 900; 64 L. J. (Q. B.) 507; 43 W. R. 600 - - - - - - - 87
Castellain *v.* Preston, 11 Q. B. D. 380; 31 W. R. 557; 52 L. J. (Q. B.) 366; 49 L. T. 29 - - - - - 40, 52
Chinnock *v.* Ely, 4 D. J. & S. 638 - - - - 46
Cholditch *v.* Jones, (1896) 1 Ch. 42; 65 L. J. (Ch.) 83; 73 L. T. 528; 44 W. R. 124; 59 J. P. 793 - - - - 22
Clarke *v.* May, 16 Beav. 273 - - - - - - 75
Clarke *v.* The Royal Panopticon Society, 3 Jur. (N. S.) 178; 5 W. R. 332 - - - - - - - 95
Clayton and Beaumont, Re, W. N. (1895) 89 - - - - 16
Clegg *v.* Rowland, L. R. 3 Eq. 368 - - - - 206
Clifford *v.* Watts, L. R. 5 C. P. 577, 587 - - - - 125
Coatsworth *v.* Johnson, 55 L. J. (Q. B.) 220 - - - 427
Cockburn *v.* Edwards, 16 Ch. D. 393; 29 W. R. 136; 50 L. J. (Ch.) 181; 43 L. T. 755 - - - - - - 98
Cohen *v.* Mitchell, 25 Q. B. D. 262; 59 L. J. (Q. B.) 409; 63 L. T. 206 - - - - - - - - 16
Consolidated Credit Corporation *v.* Gosney, 16 Q. B. D. 24; 34 W. R. 106; 55 L. J. (Q. B.) 61; 54 L. T. 21 - - - 86
Cook *v.* Montague, L. R. 7 Q. B. 418 - - - 126, 434
Cooke *v.* Oxley, 3 T. R. 653 - - - - - - 45
Cooper, Ex parte, 59 L. T. 774 - - - - - 154
Cooper *v.* Cartwright, John. 685 - - - - - 75
Cooper *v.* Macdonald, 7 Ch. D. 288; 26 W. R. 377; 47 L. J. (Ch.) 373; 38 L. T. 195 - - - - - 70, 177
Courcier *v.* Bardili, 27 S. J. 276 - - - - 86, 162
Crawcour *v.* Salter, 18 Ch. D. 419; 30 W. R. 21; 50 L. J. (Ch.) 495; 45 L. T. 162 - - - - - - 252
Crawford *v.* Toogood, 13 Ch. D. 153; 28 W. R. 248; 49 L. J. (Ch.) 108; 41 L. T. 554 - - - - - - 12
Cross *v.* Lawrence, 9 Hare, 462 - - - - - 135
Crossley *v.* Maycock, L. R. 18 Eq. 180 - - - - 46

PAGE
Cruikshank *v.* Duffin, L. R. 13 Eq. 555, 560 - - - - 95
Cruse *v.* Nowell, 25 L. J. (Ch.) 709 - - - - - 82

Danbery *v.* Lavington, 13 Q. B. D. 347 - - - - - 95
Davies' Policy, Re, (1892) 1 Ch. 90; 61 L. J. (Ch.) 650; 66 L. T. 104 - - - - - - - - - 161
Dawson *v.* Brinkman, 3 Mac. & G. 53; 3 De G. & S. 385 - - 135
Day *v.* Woolwich Equitable Building Society, 40 Ch. D. 491; 37 W. R. 461; 58 L. J. (Ch.) 280; 60 L. T. 752 - - - 78
Delhasse, Ex parte, 8 Ch. D. 511; 26 W. R. 20; 37 L. T. 440 - 153
De Visme *v.* De Visme, 1 Mac. & G. 336; 1 Hall & T. 408 - 39
Dickinson *v.* Dodds, 2 Ch. D. 463; 24 W. R. 594; 34 L. T. 607 - - - - - - - 45, 272
Dickson, Re, Hill *v.* Grant, 29 Ch. D. 331; 33 W. R. 334; 54 L. J. (Ch.) 212; 51 L. T. 891 - - - - 164, 185
Docwra, Re, 29 Ch. D. 693 - - - - - 71
Drielsma *v.* Manifold, (1894) 3 Ch. 100; 63 L. J. (Ch.) 653; 71 L. T. 62; 42 W. R. 578 - - - - - - 22
Duncan *v.* Cashin, L. R. 10 C. P. 554 - - - 86, 162
Dunlop *v.* Higgins, 1 H. L. C. 381 - - - - - 45

Earl Egmont *v.* Smith, 6 Ch. D. 469; 25 W. R. Dig. 79; 46 L. J. (Ch.) 356 - - - - - - - - 75
East London, &c. Co. *v.* Kellerman, (1892) 2 Q. B. 72; 67 L. T. 319 - - - - - - - - - 64
Ebsworth and Tidy, Re, 42 Ch. D. 34; 58 L. J. (Ch.) 665; 60 L. T. 841; 37 W. R. 657 - - - - - 32
Edward's Policy, Re, 28 W. R. 72; 41 L. T. 434 - - - 161
Ellis *v.* Hills, 67 L. T. 287 - - - - - 40
Eyre, Re, W. N. (1883) 153 - - - - - - 166

Fenn *v.* Bittleston, 7 Ex. 160 - - - - - 89
Flower, Re, 27 Ch. D. 592; 32 W. R. 1011 - - - - 39
Foley *v.* Fletcher, 28 L. J. (Exch.) 100 - - - - 42
Fraser, Re, 36 S. J. 714 - - - - - - 151
Fry *v.* Tapson, 28 Ch. D. 268 - - - - - 94

Gardner *v.* Tate, Ir. R. 10 Ch. 460 - - - - - 51
Garland *v.* Jekyll, 2 Bing. 273 - - - - - 142
Gibbins *v.* N. E. M. Asylums, 11 B. 1 - - - - 46
Goold *v.* Birmingham and Dudley Bank, 36 W. R. Dig. 213; 58 L. T. 560 - - - - - - - - 12
Greaves *v.* Wilson, 15 Beav. 434 - - - - - 63
Green *v.* Marsh, (1892) 2 Q. B. 330 - - - - - 95
Green *v.* Sevin, 13 Ch. D. 589; 28 W. R. Dig. 172; 41 L. T. 724 - 12
Greenslade *v.* Dare, 20 Beav. 284 - - - - - 55
Gribble *v.* Webber, (1896) 1 Ch. 914; 65 L. J. (Ch.) 484; 44 W. R. 489 - - - - - - - - - 193

PAGE

Hall *v.* Comfort, 18 Q. B. D. 11 - - - - - 95
Hall *v.* Hall, L. R. 8 Ch. 430, 438 - - - - 170
Hancock *v.* Hancock, 38 Ch. D. 78; 36 W. R. 166; 57 L. J. (Ch.) 65; 58 L. T. 49 - - - - - - - 70
Harkness and Allsopp, Re, (1896) 2 Ch. 358; 44 W. R. 683; 74 L. T. 652 - - - - - - 71, 177
Harris's Case, L. R. 8 Ch. 587 - - - - - 45
Harris and Rawlings, Re, W. N. (1894) 19 - - - 23
Harris *v.* Tubb, 42 Ch. D. 79; 58 L. J. (Ch.) 434; 60 L. T. 699; 38 W. R. 75 - - - - - - - 170
Harrison, Re, 36 Ch. D. 701; 40 Ch. D. 418 - - - 71
Hart *v.* Swaine, 7 Ch. D. 42; 26 W. R. 30; 47 L. J. (Ch.) 5 - - 23
Hatten *v.* Russell, 38 Ch. D. 334 - - - - - 12
Hawkins *v.* Perry, 25 L. J. (Ch.) 656 - - - - - 103
Helby *v.* Matthews, (1895) App. Cas. 471 - - - - 258
Henthorn *v.* Fraser, (1892) 2 Ch. 27; 40 W. R. 433; 61 L. J. (Ch.) 373 - - - - - - - 46, 272
Hiatt *v.* Hillman, 19 W. R. 694 - - - - 68, 96
Hilton *v.* Eckersley, 4 W. R. 326 - - - - - 417
Hodges *v.* Hodges, 20 Ch. D. 749; 30 W. R. 483; 51 L. J. (Ch.) 549; 46 L. T. 366 - - - - - - - 71
Hodson and Howe, Re, 35 Ch. D. 668; 35 W. R. 553; 56 L. J. (Ch.) 760; 56 L. T. 857 - - - - - 68, 96
Hollis *v.* Claridge, 4 Taunt. 807 - - - - - 101
Holloway *v.* Berkeley, 6 B. & C. 11 - - - - - 142
Honeyman *v.* Marryatt, 21 Beav. 14; 26 L. J. (Ch.) 619; 6 H. L. C. 112 - - - - - - - - 46
Hudson *v.* Buck, 7 Ch. D. 683; 26 W. R. 190; 47 L. J. (Ch.) 247; 38 L. T. 56 - - - - - - - - 46, 269
Hussey *v.* Horne-Payne, 4 App. Cas. 311; 27 W. R. 585; 41 L. T. 1 - - - - - - - - - 45

James *v.* Kerr, 40 Ch. D. 449; 37 W. R. 279; 58 L. J. (Ch.) 355; 60 L. T. 212 - - - - - - - - 98
James *v.* Whitbread, 11 C. B. 406 - - - - 65
Johnson and Tustin, Re, 30 Ch. D. 42; 33 W. R. 43; 54 L. J. (Ch.) 43; 51 L. T. 656 - - - - - - - 32
Jones *v.* Daniel, (1894) 2 Ch. 332; 63 L. J. (Ch.) 562; 70 L. T. 588; 42 W. R. 687 - - - - - - - 46
Jones *v.* Rimmer, 14 Ch. D. 588 - - - - - 51

Kennedy, Ex parte, 21 Q. B. D. 384; 36 W. R. 639 - - 95
Kennedy *v.* Green, 3 My. & K. 399 - - - - - 55
King *v.* Malins, 1 Drew. 308 - - - - - 205

Lawrance, Re, Bowker *v.* Austin, (1894) 1 Ch. 557; 42 W. R. 265 - - - - - - - - - 169, 552
Lawrie *v.* Lees, 14 Ch. D. 249; 28 W. R. 779; 49 L. J. (Ch.) 636; 42 L. T. 485 - - - - - - - - 61

PAGE

Lechmere *v.* Brotheridge, 32 L. J. (Ch.) 577; 32 B. 353 - - 70
Lee *v.* Butler, (1893) 2 Q. B. 318; 42 W. R. 88 - - - 258
Lewis *v.* Brass, 3 Q. B. D. 667; 26 W. R. 152 - - - 46
Lloyd *v.* Crispe, 5 Taunt. 249 - - - - - 41
London and County Banking Co. *v.* Goddard, (1897) 1 Ch. 642 - 468, 482
London and Tubbs, Re, (1894) 2 Ch. 524; 63 L. J. (Ch.) 580; 70 L. T. 719 - - - - - - 39
Long *v.* Collier, 4 Russ. 267 - - - - - - 134
Lows *v.* Telford, 1 App. Cas. 415; 24 W. R. Dig. 157; 45 L. J. (Ex.) 613; 35 L. T. 69 - - - - - - 111

MacEntire *v.* Crossley Brothers, (1895) App. Cas. 457; 2 Manson, 334 - - - - - - - - - 258
Madell *v.* Thomas and Co., (1891) 1 Q. B. 230; 39 W. R. 280 - 258
Mainland *v.* Upjohn, 41 Ch. D. 126; 37 W. R. 411; 58 L. J. (Ch.) 361; 60 L. T. 614 - - - - - - - 98
Manchester, &c. Ry. Co. *v.* North Central Waggon Co., 13 App. Cas. 554; 37 W. R. 305; 58 L. J. (Ch.) 219; 59 L. T. 730 - 258
Mason, Ex pte., (1895) 1 Q. B. 333; 64 L. J. (Q. B.) 191; 43 W. R. 278 - - - - - - - - 258
Mason *v.* Corder, 7 Taunt. 9 - - - - - - 41
Mason *v.* Taylor, 10 Ch. D. 729 - - - - - 552
Mathieson *v.* Clark, 4 W. R. 30 - - - - - 105
May *v.* Thompson, 20 Ch. D. 705 - - - - - 46
Mellers *v.* Devonshire, 16 Beav. 252 - - - - 125
Mellor's Policy, Re, 6 Ch. D. 627; 7 Ch. D. 200; 26 W. R. 70; 47 L. J. (Ch.) 246 - - - - - - - 161
Milner, Re, (1891) 3 Ch. 547; 65 L. T. 310; 40 W. R. 76 - 71
Mogul Steamship Co. *v.* McGregor, 23 Q. B. D. 598; 37 W. R. 286; 57 L. J. (Q. B.) 541; 59 L. T. 514 - - - - 417
Moss, Re, 37 Ch. D. 513; 36 W. R. 316: 57 L. J. (Ch.) 423; 58 L. T. 468 - - - - - - - 166
Mumford *v.* Collier, 25 Q. B. D. 279; 59 L. J. (Q. B.) 552; 38 W. R. 716 - - - - - - - - 95
Mundy *v.* Asprey, 13 Ch. D. 855; 28 W. R. 347; 49 L. J. (Ch.) 216; 42 L. T. 141 - - - - - - 46

New Land Development Association *v.* Gray, (1892) 2 Ch. 138; 66 L. T. 404; 61 L. J. (Ch.) 323; 40 W. R. 295 - - - 16
Newbould, Re, 14 App. Cas. 1 - - - - - 22
Newman *v.* Belsten, 28 Sol. J. 301 - - - - - 161
Newton *v.* Sherry, 1 C. P. D. 246; 24 W. R. 371; 45 L. J. (C. P.) 257; 34 L. T. 251 - - - - - - 206, 207
Noyes *v.* Paterson, (1894) 3 Ch. 267; 63 L. J. (Ch.) 748; 71 L. T. 228 - - - - - - - - - 35

Owen *v.* Crouch, 5 W. R. 545 - - - - - 103

PAGE

Page *v.* Soper, 17 Jur. 851; 22 L. J. (Ch.) 1044 - - - 167
Payne *v.* Wilson, (1895) 2 Q. B. 537; 73 L. T. 12; 48 W. R. 657 - 258
Peace and Ellis, Re, 36 W. R. 61 - - - - - - 22
Peace *v.* Brookes, (1895) 2 Q. B. 451; 64 L. J. (Q. B.) 747; 2 Manson, 491 - - - - - - - 87
Pearce *v.* Morris, L. R. 5 Ch. 227 - - - - 102
Peers *v.* Ceeley, 15 Beav. 209 - - - - - - 104
Philips *v.* Bridge, L. R. 9 C. P. 48 - - - - 437
Phillips, Re, L. R. 4 Ch. 629 - - - - - - 103
Poole *v.* Adams, 12 W. R. 683; 33 L. J. (Ch.) 639 - 40, 52
Pooley *v.* Driver, 5 Ch. D. 458; 25 W. R. 162; 46 L. J. (Ch.) 466; 36 L. T. 79 - - - - - - - 153
Potter *v.* Duffield, L. R. 18 Eq. 4 - - - - - 28
Pratt *v.* Vizard, 5 B. & A. 808; 2 N. & M. 455 - - - 101
Price *v.* Jenkins, 5 Ch. D. 619 - - - - - 170
Pride *v.* Bubb, L. R. 7 Ch. 64 - - - - - 70
Pryor *v.* Wilson, 23 S. J. 230 - - - - - 284

Radcliffe, Re, 27 L. T. 61; 2 Jur. (N. S.) 387 - - - 106
Ramsay *v.* Margrett, (1894) 2 Q. B. 18; 9 R. 407; 63 L. J. (Q. B.) 513; 70 L. T. 788; 1 Manson, 184 - - - - 258
Raven, Re, 30 W. R. 134; 45 L. T. 745 - - - - 239
Rawstone *v.* Bentley, 4 Bro. C. C. 415 - - - - 113
Rayner *v.* Preston, 14 Ch. D. 297; 29 W. R. 547; 50 L. J. (Ch.) 472; 44 L. T. 787 - - - - - 40, 52
Reid *v.* Reid, 31 Ch. D. 402; 34 W. R. 332; 55 L. J. (Ch.) 294; 54 L. T. 100 - - - - - - - - 178
Rex *v.* Bedworth, 8 East, 387 - - - - - 125
Ridgeway *v.* Sneyd, K. 627 - - - - - - 125
Ridgway *v.* Wharton, 6 H. L. C. 264 - - - - 46
Rigley *v.* Dakin, 2 Y. & J. 83 - - - - - 101
Roberts *v.* Ball, 24 L. J. (Ch.) 471 - - - - 105
Rossiter *v.* Miller, 3 App. Cas. 1124; 26 W. R. 865 - - - 28
Russell *v.* Plaice, 18 Beav. 21; 18 Jur. 254 - - - 95
Rymer, Re, (1895) 1 Ch. 19; 64 L. J. (Ch.) 86; 71 L. T. 590; 43 W. R. 87 - - - - - - - - 184

Sale *v.* Lambert, L. R. 18 Eq. 1 - - - - - 28
Savile *v.* Couper, 36 Ch. D. 520; 35 W. R. 829; 56 L. T. 907 - 166
Scobie *v.* Collins, (1895) 1 Q. B. 375; 71 L. T. 775; 64 L. J. (Q. B.) 10 - - - - - - - - 95
Scott *v.* Alvarez, (1895) 2 Ch. 603; 73 L. T. 43; 64 L. J. (Ch.) 821 - 51
Sear *v.* House Property Investment Society, 16 Ch. D. 387; 29 W. R. 192; 50 L. J. (Ch.) 77; 43 L. T. 531 - - - 123
Seed *v.* Bradley, (1891) 1 Q. B. 319 - - - - 86
Seyton, Re, 34 Ch. D. 511 - - - - - - 161
Sheil, Ex parte, 4 Ch. D. 789; 25 W. R. 420; 46 L. J. (Bank.) 62; 36 L. T. 270 - - - - - - - 152

PAGE

Shenstone *v.* Hilton, (1894) 2 Q. B. 452; 63 L. J. (Q. B.) 584; 71 L. T. 339 - - - - - - - 258
Small *v.* National Provincial Bank of England, (1894) 1 Ch. 686; 8 R. 163; 63 L. J. (Ch.) 270; 70 L. T. 492; 42 W. R. 378 - - 86
Smith *v.* Wallace, (1895) 1 Ch. 385 - - - 33, 61
Smith *v.* Webster, 3 Ch. D. 49 - - - - - 46
Snell, Re, 6 Ch. D. 105 - - - - - - 552
Somerset, Re, (1894) 1 Ch. 231; 7 R. 34; 42 W. R. 145 - - 94
Soutar's Policy, Re, 26 Ch. D. 236; 32 W. R. 701; 50 L. T. 262 - 161
Sparks, Re, 6 Ch. D. 361; 25 W. R. 869 - - - - 103
Starr-Bowkett Building Society and Siburn, Re, 42 Ch. D. 375; 38 W. R. 1; 58 L. J. (Ch.) 459; 60 L. T. 811 - - 33, 61
Stow *v.* Yea, Jacob, 427 - - - - - - 417
Stranks *v.* St. John, L. R. 2 C. P. 376 - - - - 115
Sutton *v.* Rawlings, 3 Ex. 407 - - - - - 103
Syers *v.* Syers, 1 App. Cas. 174; 24 W. R. 970; 35 L. T. 101 - 153

Tailby *v.* Official Receiver, 13 App. Cas. 523; 37 W. R. 513; 58 L. J. (Q. B.) 75; 60 L. T. 62 - - - - - 86
Tanqueray-Willaume *v.* Landau, 20 Ch. D. 465 - - - 18
Taylor *v.* Evans, 25 L. J. (Exch.) 269 - - - - 42
Taylor *v.* Meads, 5 N. R. 348; 4 D. J. & S. 597; 11 Jur. N. S. 166 - - - - - - - 70, 177
Teevan *v.* Smith, 20 Ch. D. 724; 30 W. R. 716; 51 L. J. (Ch.) 621 - - - - - - - - - - 102
Thomas *v.* Brown, 1 Q. B. D. 714; 24 W. R. 821; 35 L. T. 237 - 28
Thomas *v.* Kelly, 13 App. Cas. 506; 37 W. R. 353; 58 L. J. (Q. B.) 66; 60 L. T. 114 - - - - - - 86
Tillett, Re; Lee *v.* Wilson, (1892) 1 Ch. 86; 61 L. J. (Ch.) 38; 40 W. R. 204 - - - - - - - - 494
Tippett and Newbould, Re, 37 Ch. D. 444 - - - 71
Torrance *v.* Bolton, L. R. 8 Ch. 118 - - - - - 51

Venn and Furze, Re, (1894) 2 Ch. 101; 63 L. J. (Ch.) 303; 70 L. T. 303 - - - - - - - - 18
Vine *v.* Raleigh, (1896) 1 Ch. 37; 65 L. J. (Ch.) 103; 44 W. R. 169 - - - - - - - - - - 16

Walhampton Estate, Re, 26 Ch. D. 391 - - - - 105
Walsh *v.* Lonsdale, 21 Ch. D. 9 - - - - - 427
Waring *v.* Booth, 36 W. R. 756 - - - - - 23
Warner, Re, 17 Ch. D. 711 - - - - - - 63
Water *v.* Anderson, 11 H. 301 - - - - - 205
Watson, Re, 25 Q. B. D. 27; 38 W. R. 567; 59 L. J. (Q. B.) 394 - 258
Webster *v.* Carline, 4 Man. & Gr. 27 - - - - 298
Wellesley, Lord *v.* Withers, 4 E. & B. 750; 24 L. J. (Q. B.) 139 - - - - - - - - 188, 423
Wenn *v.* Bull, 7 Ch. D. 29 - - - - - - 46

PAGE

Whatman *v.* Gibson, 9 Sim. 196 - - - - - 414
Wheeler, Re, 1 D. M. & G. 134 - - - - - 103
Whitbread *v.* Jordan, 1 Y. & C. 301 - - - - 135
White, Re, (1893) 2 Ch. 41; 2 R. 380; 62 L. J. (Ch.) 342; 68 L. T. 187; 41 W. R. 683 - - - - - 184
White and Smith, Re, (1896) 1 Ch. 637; 65 L. J. (Ch.) 481 24, 51
Wilkinson *v.* Collyer, 13 Q. B. D. 1; 32 W. R. 614; 53 L. J. (Q. B.) 278 - - - - - - - 116
Wilkinson *v.* Grant, 18 C. B. 319 - - - - - 101
Willett *v.* Argenti, 60 L. T. 735 - - - - - 31
Williams *v.* Glenton, L. R. 1 Ch. 200; 13 W. R. 1030 - - 39
Willis *v.* Brown, 10 Sim. 127 - - - - - - 55
Willock *v.* Noble, L. R. 7 H. L. 580 - - - - 186
Wilson and Stevens, Re, (1894) 3 Ch. 546; 63 L. J. (Ch.) 863; 71 L. T. 388; 43 W. R. 23 - - - - - - 39
Wilton *v.* Dunn, 17 Q. B. 294 - - - - - 111
Wythes, Ex parte, 53 L. T. 492 - - - - - 42

Yarrow, Re, 38 W. R. 175; 59 L. J. (Q. B.) 18; 61 L. T. 642 - 257
Yates, Re, 38 Ch. D. 112 - - - - - - 86

THE

PRACTICE OF CONVEYANCING.

CHAPTER I.

AGREEMENTS.

INTRODUCTORY.—Agreements on account of their informal nature, are often regarded as instruments of such uniform simplicity that the preparation of them may safely be ventured on by the most unskilful, irrespective of the difficulty of their subject matter.

The best known fact with regard to them is, that—like wills—they require no set form of words for their validity. The knowledge of this fact, combined with a desire to save expense in the first instance, and an undue estimate of his own legal knowledge (for almost every one imagines he knows something about law), often tempts an unwary layman to become his own draftsman, probably to his future regret. It may safely be affirmed that, of all instruments known to the law, none are productive of so vast an amount of needless litigation as agreements and wills, owing to the careless way in which they are framed by unlearned persons. This caution cannot appear too early in a work like the present.

It must not be assumed that because a document is untechnical in form the preparation of it is, by any means, independent of technical knowledge and professional skill. An agreement is the basis of all future

operations, and when signed cannot be departed from without the consent of all parties—a consent which can seldom be obtained. If well drawn, it should anticipate the numerous questions which may arise in carrying it into effect, and provide for the various events which may possibly happen. Few legal documents indicate professional knowledge and ability better than a well drawn agreement.

It must not be inferred from what is before stated, that an agreement, when signed, can always be departed from, even with the consent of all parties to it, for it may happen that, after signing it, some of them may die, leaving persons interested who are not *sui juris*; this therefore should be always borne in mind in the preparation or perusal of an agreement. If the framer of the document perform his task skilfully, none of the parties will be able to withdraw from it without the consent of the others; he will also have the satisfaction of giving effect to his client's intentions; and whatever turn the matter afterwards may take, he can always refer to the agreement as a land-mark in enforcing or defending the rights of his client.

Instructions.—On receiving instructions for an agreement, or any other legal document, it is an excellent plan for a solicitor to write out the instructions in the presence of, and get them signed by, his client or clients.

It is better to have a written agreement even when the same solicitor acts for all parties; indeed a written agreement should scarcely ever be dispensed with, for it saves many difficulties that might otherwise arise during the progress of the business. Experience proves that these difficulties arise even where all parties are desirous of carrying out what they consider the understanding originally come to. Seldom is it that persons having

opposite interests, however honestly disposed, will not differ as to the meaning or effect of a prior verbal arrangement. When acting on behalf of all parties, in cases of little magnitude or importance, especially in transactions which will be carried out by means of some subsequent formal instrument—*e. g.*, a conveyance, lease, or partnership deed—the instructions signed by all parties will often constitute a sufficient written agreement. Should any doubt afterwards arise as to what was agreed upon, it will then be set at rest by referring to the signed instructions.

But in almost all cases where the parties employ separate solicitors, as well as in important cases where the same solicitor acts for all, it is necessary to have a formal and carefully drawn agreement. This is especially the case in transactions where the agreement is the only document which will be required, *e. g.*, agreements for personal service, for the use of a patented invention, or for the compromise of disputed claims either by submission to arbitration or otherwise.

It may, here, be advisable to mention that with respect to an equitable interest in property, an agreement alone is sufficient to transfer it from the seller to the purchaser; for in equity a contract is equivalent to a conveyance, according to the maxim that equity regards as done that which is agreed to be done. Consequently after a binding contract for sale and purchase has been signed, the purchaser is, in equity, the owner of the estate, and the vendor is entitled to the purchase-money, subject, of course, to his liability to deduce a good title and to execute a valid conveyance according to the contract. Even where the estate which the vendor has contracted to sell is not equitable merely, but legal, the High Court of Justice, in the exercise of its equitable jurisdiction, carries out the same principle by treating the vendor as a trustee of the estate to which the contract relates for

the purchaser, and the purchaser as a trustee of the unpaid purchase-money for the vendor; and if the purchaser should die, his heir or devisee will have the same equitable interest in the property, as the purchaser would have had if alive—namely, a right to call upon the vendor to convey the estate to him upon payment of the purchase-money. Before 1867 the devisee, and before 1877 the heir, of a deceased purchaser would have been entitled to have the unpaid purchase-money paid out of the purchaser's personal estate—now he must provide it himself, unless the will of the purchaser contains a declaration to the contrary.[1]

But even if the interest be merely equitable, and therefore effectually transferred by agreement, it is not usual to rely on the agreement alone; and the purchaser of an equitable interest may insist on having it transferred by the same description of assurance as is used in the transfer of a legal estate. Although as matter of law this may be unnecessary, there is always the possibility that at some future time questions and doubts may arise whether or not it was done, thus leaving the matter in an unsatisfactory state. It is therefore advisable to have the agreement carried into effect in the usual way, by taking a formal assignment of the equitable interest.

Preparation of Draft.—In cases where a formal agreement is necessary the first question for a solicitor to decide is whether the matter is of sufficient importance to justify him in laying instructions to prepare the agreement before counsel. If this is not the case, or if his client objects to the expense of such a course, the solicitor will proceed to draft the agreement himself.

In order to prepare an agreement, or any other instrument, properly, the outline of it should be previously

[1] 30 & 31 Vict. c. 69, § 2; 40 & 41 Vict. c. 34, § 1.

arranged in the mind of the draftsman, so that he may have a bird's-eye view of the whole, and a clear and distinct conception of the relation of the various parts to one another. Before commencing the draft he will do well to transfer the mental idea to paper by jotting down in a tabulated form the heads of the draft in the order in which they will occur, so that he may be at liberty to concentrate his whole attention upon each part in succession, without being under the necessity of constantly reviewing the whole scheme to perceive the relation of the clause in hand to the rest of the draft. By adopting this course he will save himself considerable time and labour, and be more likely to frame a creditable document. Except in ordinary cases, such as contracts for sale, hiring agreements, and agreements for tenancy, precedents of agreements are, as a rule, of little service to the draftsman. Other agreements are usually of so special a nature that he must himself frame the necessary clauses, relying upon his precedents only so far as they suggest a system of arrangement and conditions which should be provided for.

The plan of setting out the subject matter in numbered paragraphs will usually be found convenient, especially in intricate and involved cases, where clearness and perspicuity are the main objects of the draftsman. Except in very short and simple agreements, it is also an excellent plan to place a concise marginal note or catch-word opposite to each paragraph.

Marginal notes are sometimes objected to, as being difficult to frame concisely and accurately, as adding to the cost of copying, and as tending to distract the attention of a client from the actual provisions of the draft. But if they are framed with ordinary care, their usefulness and convenience will more than compensate for these disadvantages. They not only form a running analysis, but enable easy and speedy reference to be

made to particular clauses of the document in the course of correspondence or in the event of litigation.

It is quite unnecessary to import into simple agreements the language formerly used in covenants or agreements under seal, for instance, "An agreement made and entered into this, &c., between A. B. of the one part, and C. D. of the other part, whereby the said A. B. doth hereby for himself, his heirs, executors, and administrators agree, &c.," always was mere verbiage in simple agreements, as the heirs of a person could not be bound by an instrument not under seal, and executors and administrators are bound without being named; but since the 32 & 33 Vict. c. 46, which abolished the priority of payment formerly existing in favour of specialty over simple contract debts, as from the 1st of January, 1870, it has become mere verbiage in covenants or agreements under seal as well, so far as any remedy against the person or estate of any party to the agreement is concerned. Where, however, a covenant is of such a nature that it might be necessary or desirable for the person with whom the covenant is made to be able to enforce it at law against the heir of the covenantor, it was, until 1882, the proper course for the covenantor to covenant "for himself and his heirs." But now, if a covenant is by deed—*i. e.*, by an instrument under seal—the heirs of the covenantor are bound,[1] unless a contrary intention is expressed.

In simple agreements it is sufficient to specify the date, and the names, addresses, and descriptions of the parties, and then to go at once to the substance of the agreement, without any words of covenant, unless recitals are necessary; and then it is usual (although not necessary) to insert the words "Now it is hereby agreed as follows."

If A. B. agrees to do an act, and dies before the act is done, his representatives, both real and personal, that

[1] 44 & 45 Vict. c. 41, § 59.

is to say, his heirs or devisees as well as his executors or administrators, as the case may be (according to whether he died testate or intestate), are bound to do it or pay for it, *to the extent of the assets they acquire from the deceased*, although they may not be referred to in the instrument creating the obligation. The only exception to this rule is where it is expressly stated that the obligation shall not extend to the representatives of the person bound. In cases where it is intended that an agreement shall be binding upon the parties personally only, such as agreements for personal service, this should always be done.

It is, however, still desirable to mention the assigns of the covenantor where it is intended to make covenants run with the land.

Words and phrases that have no meaning should never be introduced into legal documents; for they answer no useful purpose, but only encumber the document and tend to obscure its true meaning. A good draftsman inserts all that should be inserted with clearness and brevity, and leaves nothing to be inferred that ought to be expressed.

Where it is necessary to embrace several distinct matters in the same agreement the most scientific way is to exhaust one subject before commencing another, and this will save much time and lessen the risk of mistake and confusion in any subsequent reference to the agreement.

Completion.—In cases where the same solicitor is concerned for all parties, he will, after drawing and settling the agreement, have it engrossed, signed by his clients, attested, and properly stamped.

In cases where he is not concerned for all parties, he will, after drawing the agreement according to his client's instructions, make and forward a fair copy to

the solicitor for the other parties for approval; and, as soon as the draft has been finally settled on behalf of all parties, each solicitor will make one engrossment for signature by his own client. After the engrossments are signed, the solicitors concerned will make an appointment to exchange the parts signed by their respective clients, and the deposit (if any) will usually be paid. Strictly, this ought to be done at the office of the solicitor who prepared the draft, but in practice it is seldom insisted on. After this there only remains to carry into effect the terms of the contract according to the circumstances of the case.

Stamps.—An agreement for a lease requires the same stamp as a lease for the term and at the rent agreed upon. An agreement "for the sale of any equitable estate or interest in any property whatsoever, or for the sale of any estate or interest in any property, except lands, tenements, hereditaments or heritages, or property locally situate out of the United Kingdom, or goods, wares, or merchandise, or stock, or marketable securities, or any ship or vessel, or part, interest, share, or property of or in any ship or vessel," should be stamped with the same *ad valorem* duty as a conveyance of the same property, unless it is intended to effectuate the agreement by a duly stamped conveyance within six months.[1] Any other agreement under hand only (not being an agreement for a lease) requires a 6*d.* stamp, and not more than 14 days from the date of the agreement are allowed for getting the stamp affixed. If not done within that time it can only be subsequently stamped on payment of a penalty of £10. An adhesive 6*d.* stamp may be used if it is affixed before signature, and cancelled or obliterated by the party who *first* signs the

[1] Stamp Act, 1891, § 59.

agreement. Should the agreement be under seal, which must usually be the case where a company is party to it, it will require a 10*s.* stamp. In this case the time allowed for stamping is ordinarily the same as in the case of any other deed, viz., 30 days; or if executed abroad within 30 days from its arrival in England, on a statutory declaration being made to that effect. But if the opinion of the Commissioners is taken, as to the amount of duty, the deed must be stamped within 14 days. Persons living in the country may forward instruments to Somerset House for stamping through any postal money order office, postage free; and in some large towns documents written or engrossed on paper may be stamped at the chief post office of the town.

CHAPTER II.

SALES OF REAL ESTATE.

Introductory.—In sales by private contract, it often happens that a vendor enters into a binding contract for sale before consulting his solicitor. But a prudent man will usually either consult his solicitor before selling at all, or instruct him to prepare an agreement to carry negotiations (or a verbal contract) for sale into effect.

With regard to sales by public auction, it can seldom, if ever, happen that the vendor does not consult his solicitor in the first instance.

In each of the above cases, the duties of the solicitor will be somewhat different, and it will be convenient to deal with each case separately.

Open Contract.—In cases where a client has agreed to sell an estate without having obtained professional assistance, it will generally be found that he has signed what is termed "an open contract," the meaning of which is that he has made no stipulations with the purchaser as to the title or evidence of title which the latter may require, or in fact inserted any conditions whatever in the contract. Both tact and judgment are required in these cases, and some consideration will be necessary before the abstract of title is furnished to the purchaser's solicitor. In such a case the purchaser is entitled to a forty years' title if the estate be one of ordinary freehold or copyhold tenure;[1] but if it be land held under a grant from the Crown, a reversionary

[1] 37 & 38 Vict. c. 78, § 1; R. P. Stat. p. 185.

interest, or leasehold property, the abstract must show the creation of the estate or interest agreed to be sold. In one case,[1] it was held that a deed more than twenty years old containing a recital of the seisin in fee of the vendor was a good root of title; but it would not be advisable to rely upon this decision. It must be borne in mind that, under an "open contract," the purchaser is not only entitled to have a safe holding title, but can require a strictly marketable one; and although to non-professional minds there may not appear any difference between these descriptions of title, yet to a professional man the difference is very great. A person may have a safe holding title from having for twelve years enjoyed property adversely to persons not under disability; but this would not in equity be considered a marketable title: the general rule being that, in the absence of any agreement to the contrary, a vendor must deduce a forty years' title. There is one apparent exception to this rule, for a purchaser who enters into a contract to buy, after express notice that the vendor can only make a specified title, will not be allowed to demand the usual forty years' title, although the actual contract may be silent on the point.

Where a contract merely describes the property in general terms, without specifying the estate or interest in it which is intended to be sold, it will be construed as a contract for the sale of the whole of the vendor's interest in the property; and the presumption will be that such interest is an estate in fee simple free from incumbrances, unless it can be clearly shown that the purchaser knew that the vendor was only entitled to some less estate. And even where the purchaser knows that the vendor's interest is an equity of redemption, the vendor must pay off the mortgage and convey

[1] *Bolton* v. *London School Board*, 7 Ch. D. 766.

the property free from incumbrances, unless the contract contains a stipulation to the contrary.[1]

Under an open contract the purchaser is under no restriction as to the number or nature of his objections or requisitions upon the title or as to the time within which they must be made. Nor is he bound to complete the purchase within any particular time. In case of great delay, however, the vendor may give him notice that unless he completes within a specified time he will treat the contract as rescinded. The effect of such a notice is to make the specified time, if reasonable, of the essence of the contract. In the case of undue delay by the vendor, the purchaser may give a similar notice. The circumstances of each particular case must be considered in order to decide what time is reasonable.[2]

Under an open contract the vendor must, at his own expense, stamp any unstamped or insufficiently stamped title deeds, paying the necessary duty and penalty; and if the property is in Yorkshire or Middlesex he may also be called upon, at his own expense, to register any unregistered deeds capable of and requiring registration. He may also be put to great inconvenience in clearing up questions arising on the title as to the births, marriages, and deaths of former owners, and other events which may have to be proved by declaration, and also questions as to identity arising from discrepancies between ancient and modern descriptions.

Until 1882 the purchaser could also insist, and generally did insist upon having all the title deeds produced, and all other evidence and information necessary to verify the abstract obtained and furnished, and in some cases, upon having covenants for the production of deeds obtained, at the vendor's expense.

[1] *Goold* v. *Birmingham & Dudley Bank*, 58 L. T. 560.

[2] *Crawford* v. *Toogood*, 13 Ch. D. 153; *Green* v. *Sevin*, 13 Ch. D. 589; *Hatten* v. *Russell*, 38 Ch. D. 334.

The vendor must still produce and furnish all deeds and evidence in his possession at his own expense; but the Vendor and Purchaser Act, 1874, and the Conveyancing Act, 1881, have thrown upon the purchaser, under an open contract, certain expenses formerly borne by the vendor.

§ 2 of the Vendor and Purchaser Act, 1874,[1] provides that in the completion of any contract for the sale of land made after the 31st of December, 1874, the rights of vendor and purchaser shall be regulated by certain rules which may be summarized as follows:—

(*a*) The purchaser or lessee of a term of years shall not be entitled to call for the title to the freehold.

(*b*) Recitals and statements in deeds, statutes, and declarations twenty years old shall be sufficient evidence unless proved to be inaccurate.

(*c*) Where the purchaser will have an equitable right to the production of any deeds, the inability of the vendor to furnish a legal covenant for their production shall be no objection to the title.

(*d*) The purchaser must bear the expense of obtaining any covenants for, or acknowledgments as to, production which he may require.

(*e*) Where the vendor retains any part of an estate to which any deeds relate he may retain the deeds.

§ 3 of the Conveyancing Act, 1881,[2] contains provisions applicable to contracts made after the 31st of December, 1881, which, so far as sales of freehold land are concerned, are to the following effect:—

(*a*) The purchaser is not entitled to an abstract of any document prior to the prescribed commencement

[1] 37 & 38 Vict. c. 78. [2] 44 & 45 Vict. c. 41.

(*i. e.*, in an open contract, forty years) of the title, nor to the production of, or any information relating to, the prior title.

(*b*) Recitals, in abstracted deeds, of the prior title must be assumed to be correct unless the contrary appears.

(*c*) If the property was formerly copyhold, and has been enfranchised, the purchaser must not call for the title to make the enfranchisement.

(*d*) A purchaser who buys more than one lot held under the same title is only entitled to one abstract at the vendor's expense.

(*e*) The purchaser must pay the expense of the production and inspection of all documents not in the vendor's possession, of obtaining all evidence not in the vendor's possession, and of making attested or other copies required by him of all documents retained by the vendor.

The last five rules apply to leasehold, as well as freehold, land, and the following additional rules also apply to leaseholds:—

(*a*) The purchaser must assume, unless the contrary appears, that the lease and every superior lease (if any) were well granted.

(*b*) The production of the last receipt for rent is to be taken as evidence that all the lessee's covenants in the lease and in every superior lease (if any) have been duly performed up to the date of completion.

(*c*) On the sale of an underlease the purchaser is not entitled to call for the title to the leasehold reversion.

Where any question arises as to the rights of the vendor or purchaser under an open contract, the vendor's solicitor should refer to the above-mentioned Acts them-

selves, or to some standard work on the law of vendors and purchasers.[1]

PRIVATE CONTRACT.—*Preliminary.*—In cases where a client consults his solicitor with reference to a proposed sale by him, the first and most necessary step is to examine his title deeds carefully, in order to see whether or not he can sell the estate, and if so, under what conditions it will be safe to do so. An abstract of the title, or of the greater part of it, is often in existence, and it is usually desirable to complete it before preparing the contract for sale. On this point, see the remarks at page 19, *post.* It may happen that the vendor has obtained an indefeasible title under the Act to facilitate the Proof of Title to and the Conveyance of Real Estates,[2] or that he has obtained a judicial declaration of title under the Declaration of Title Act, 1862,[3] but these Acts, having never been popular, have been very little resorted to. He may possibly have obtained registration, with an absolute or possessory title, under the Land Transfer Act, 1875.[4] If he is registered with an absolute title, the certificate of registration will be conclusive evidence of his title, subject to any restrictions or *caveats* which may appear on the register. Upon searching the register, his solicitor will be able to advise him whether or not the consent of any other person is necessary to the proposed sale, and what steps ought to be taken to obtain such consent, and to remove the caveats, if any. Or it may turn out that he is merely a tenant for life or in tail, or is only entitled to an undivided share in the property jointly with other persons. If he is tenant in tail, the question will arise

[1] Dart, V. & P. 6th ed. Ch. VI.; Greenwood's Real Property Statutes, 2nd ed. pp. 188—199; Wolstenholme's Conveyancing Acts, 7th ed. pp. 8, 9, and 18—22.

[2] 25 & 26 Vict. c. 53.

[3] 25 & 26 Vict. c. 67.

[4] 38 & 39 Vict. c. 87.

whether he can bar the entail under the Fines and Recoveries Act,[1] and if he is a joint tenant or tenant in common, it may be necessary to take proceedings under the Partition Acts, 1868 and 1876.[2] Every solicitor should know the main provisions of these Acts, as he may be suddenly requested to advise upon them; and unless he is familiar with them, he may forget, not only their contents, but even their existence.

It must be remembered that a bankrupt cannot sell any property which belonged to him at the date of adjudication. It vests in his trustee. But a receiving order has no such effect. Nor can an undischarged bankrupt sell freehold land which he has acquired since adjudication. It vests in his trustee.[3] But he can sell leasehold[4] and other personal property so acquired,[5] unless his trustee has intervened and claimed it.

If the proposed vendor is a tenant for life, or other limited owner having the powers of a tenant for life under the Settled Land Act, 1882, he can sell and convey under §§ 3, 4, and 20 of that Act.[6] The decisions as to what persons have these powers should be consulted; for in some cases a person who does not appear, at first sight, to claim under the settlement or will—*e.g.*, a person entitled as heir at law or next of kin to rents during the life of another in consequence of a direction to accumulate being void under the Thellusson Act—may be able to exercise the powers of a tenant for life.[7] It will be necessary to ascertain whether or not any "trustees of the settlement," as defined by § 2 (8) of that Act,

[1] 3 & 4 Will. 4, c. 74.

[2] 31 & 32 Vict. c. 40; 39 & 40 Vict. c. 17; Greenwood's R. P. Statutes, 2nd ed. p. 108.

[3] *New Land Development Association* v. *Gray*, (1892) 2 Ch. 138.

[4] *Re Clayton and Beaumont*, W. N. (1895), 89.

[5] *Cohen* v. *Mitchell*, 25 Q. B. D. 262.

[6] 45 & 46 Vict. c. 38; Greenwood's R. P. Statutes, 2nd ed. p. 475.

[7] *Re Atherton*, W. N. (1891), 85; *Vine* v. *Raleigh*, (1896) 1 Ch. 37.

and § 16 of the Settled Land Act, 1890, are in existence. If not, a summons for the appointment of such trustees under § 38 must be issued in the Chancery Division, unless they can be appointed under § 17 of the Act of 1890. Where the trustees are not willing to waive notice under § 5 of the Settled Land Act, 1884,[1] the intending vendor must give them the notice prescribed by § 45 of the Act of 1882.

The consent of the trustees to a sale by a limited owner is not necessary except in the case of a sale of the principal mansion-house (if any), and the park, pleasure grounds, and lands usually occupied with it,[2] but heirlooms cannot be sold by a limited owner without the consent of the Chancery Division of the High Court of Justice.[3] A farm-house is not a "mansion-house."[2]

Of course, a limited owner cannot receive the purchase-money. It must be paid to the trustees of the settlement or into Court,[4] to be invested or applied in the manner authorized by § 21 of the Settled Land Act, 1882, or § 13 of the Settled Land Act, 1890.

If a tenant for life, who is selling the fee simple under the Settled Land Act, has incumbered his life estate, he must obtain the written consent of his incumbrancers, unless the mortgages contain provisions enabling him to sell without such concurrence. And it may be desirable to stipulate that the purchaser shall not require such incumbrancers to join in the conveyance, and in some cases that he shall not require any consent from them.[5]

It should be mentioned that where a married woman is a limited owner, and is entitled for her separate use, she may sell under the Settled Land Acts as if she were unmarried; while, if she is not entitled for her separate

[1] 47 & 48 Vict. c. 18.
[2] 45 & 46 Vict. c. 38, § 15; 53 & 54 Vict. c. 69, § 10.
[3] 45 & 46 Vict. c. 38, § 37.
[4] *Ibid.* § 22.
[5] See *Cardigan* v. *Curzon-Howe*, 40 Ch. D. 338; 41 Ch. D. 375.

use, she and her husband may sell.[1] The case of a lunatic limited owner is provided for by § 62 of the Settled Land Act, 1882, while §§ 59 and 60 enable the powers conferred by the Acts to be exercised on behalf of infants, whether they are seised in fee simple or are limited owners.

It should be remembered that an intending vendor may, possibly, be under some personal disability other than that of infancy. The powers of disposition of married women are dealt with in a subsequent chapter,[2] and full information as to other cases of disability will be found in Dart's Vendors and Purchasers;[3] but it may be observed that in agreements for the sale of the interests of married women not belonging to them for their separate use, or as their separate property, provision must be made in the agreement for the expense of acknowledging the conveyance if it be not intended that the vendor is to do whatever may be necessary at his own expense. In cases where a vendor stipulates for a certain sum clear of all expenses or deductions, his solicitor must take care to express the intention distinctly, otherwise the vendor may be called upon to pay costs which he had intended to throw upon the purchaser.

In many cases trustees can sell under a special power contained in the instrument creating the trust. Where a will charges debts on real estate, the executors may, in some cases, sell; and if such sale takes place within twenty years from the testator's death, the purchaser need not, and ought not to, inquire whether any debts remain unpaid. After the lapse of twenty years he must inquire on a sale of freeholds by executors,[4] but not on a sale of leaseholds.[5]

[1] 45 & 46 Vict. c. 38, § 61.
[2] p. 69, *post*.
[3] 6th ed. pp. 1—34.
[4] *Tanqueray-Willaume* v. *Landau*, 20 Ch. D. 465.
[5] *Re Venn and Furze*, (1894) 2 Ch. 101.

PRIVATE CONTRACT.—*Preparation of Draft.*—Where a vendor has neither signed a binding contract nor previously consulted his solicitor, he usually instructs the latter to prepare a contract to carry into effect a sale of property already verbally agreed upon. Such contract is drawn by the vendor's solicitor, as he generally has the title deeds in his possession, and knows more about the title and the property than the purchaser's solicitor does; the latter, in the majority of cases, understands very little about the matter until after he has received the draft contract.

In order to prepare the contract properly, it will be necessary to make a note of the names and addresses of the vendor and purchaser, the description of the property, the nature of the vendor's interest if he is not seised in fee simple or able to sell the fee simple, the price to be paid, the time for completing the purchase, whether any rights or interests are to be reserved to the vendor, and any other stipulations subject to which the sale is to be made.

Then the deeds must be as carefully examined as in the last case dealt with; and, if time permits, an abstract should be made at once, as it will be useful in framing the contract, and will afterwards be required for delivery to the purchaser's solicitor. In case there is not time to prepare an abstract, a careful analysis of the deeds should be made. The first point is to decide what shall be made the root of title. If the abstract commences with a will, the purchaser may require evidence of seisin by the testator, unless precluded by special stipulation, or unless a deed twenty years old contains a recital of his seisin, and this may be difficult to produce. The best deed to commence an abstract with is a mortgage, as it is a safe presumption that the title was investigated and approved of on behalf of the mortgagee before he advanced his money. If the abstract is commenced with a

document less than forty years old, the contract must contain a stipulation to that effect; and it is always advisable to state the nature of the document with which the abstract is to commence, describing it as "a conveyance upon a sale," or "a mortgage," or as the case may be.

It is often desirable to stipulate that recitals in deeds less than twenty years old shall be evidence; but this will entirely depend on the state of the title. Stipulations similar to those used in conditions of sale in the case of a sale by auction, as to delivery of abstract, time for requisitions, stamping, and registration of deeds, description, identity, time of completion, interest, apportionment of outgoings, delivery of deeds, rescission, and failure to carry out the agreement, should usually be inserted in the contract; but as it will have to be submitted to the purchaser's solicitor for approval, it may, in some cases, be found impracticable or unwise to insist upon all of them. Much will depend upon the desire of the vendor to sell and the eagerness of the purchaser to buy. The common form conditions of the local Law Society may sometimes be adopted as the basis of the contract; but they are longer than the forms given in this volume, and must, in nearly every case, necessarily contain a number of stipulations that are not required in the particular transaction in hand, for they are so framed as to be applicable to properties of various tenures and descriptions.

If it is desired to reserve any rights or easements to the vendor—such as rights of light, rights of way, rights to use drains, ash-pits or party-walls—clauses to that effect must be inserted in the draft. If the vendor is selling a small piece of land for a special purpose, it may be desirable to reserve power for him to deal as he thinks fit with any adjoining land which he retains.[1] In some

[1] *Aldin* v. *Latimer*, 38 S. J. 458.

cases it is desirable to protect the vendor against liability to give the purchaser a right of way over adjoining land. Where the vendor is in occupation of a house agreed to be sold, inquiry must be made what fittings and fixtures are intended to pass, and whether the purchaser is to take any at a valuation.

Having prepared the draft contract, a fair copy must be sent to the purchaser or his solicitor; and after he has perused it, and all debateable points have been disposed of, each solicitor will have one part fair copied, and get it signed by his client; and then, having compared both parts, one will be exchanged for the other. It is not necessary that both parties should sign each part of the contract; it is quite sufficient if the part retained by each is signed by the opposite party. A contract for sale of real estate usually requires a 6*d.* stamp, which may be an adhesive one, if cancelled by the person who first signs the contract.[1] But contracts for the sale of equitable interests, and certain other contracts for sale specified in § 59 of the Stamp Act, 1891,[2] must bear *ad valorem* stamps as if they were conveyances, unless it is intended to transfer such interests by formal conveyance within six months.

Public Auction.—*Preliminary.*—On receiving instructions to put property up for sale by public auction, the first question for consideration is whether or not the owner can sell, and the second, what auctioneer should be employed. In some cases the vendor will name the auctioneer; in others he will leave the matter in his solicitor's hands, in which case it is as well to bear in mind that, with respect to large estates, an auctioneer of repute and standing is likely to realize more than one less known to the public. Having fixed upon the auctioneer, he must be seen and instructed upon the matter, and (if a London auctioneer be employed) he will obtain all

[1] 54 & 55 Vict. c. 39, § 22. [2] 54 & 55 Vict. c. 39.

necessary particulars, and in some cases insert a preliminary advertisement that the property is in the market. He will also prepare and forward to the vendor's solicitor for perusal and settlement the particulars of sale. If, however, the auctioneer is in practice in the country, the solicitor will prepare the particulars of sale. In some parts of the country the solicitor inserts the advertisement, while in other parts this is done, as in London, by the auctioneer.

It may be mentioned that in cases where an auctioneer is paid by commission, the vendor's solicitor is allowed the scale fee for deducing title, but not for conducting the sale. If, however, he does work (such as preparing particulars and advertisements) not covered by the scale fee for deducing title, he is entitled to be paid a reasonable sum for such work.[1]

The rule is the same when the auctioneer's remuneration is a lump sum paid by the vendor,[2] although it may only be a fee for taking the bids in the auction room,[3] and when it is paid by the purchaser under conditions of sale stipulating for such payment.[4] But if the solicitor merely employs an auctioneer to take bids, paying him *out of his own pocket* a fixed fee for doing so, and does all the rest of the work himself, he appears to be entitled to the scale fee for conducting the sale.[4] The true test is whether the auctioneer is employed at the vendor's expense or not. Where an auctioneer is paid a fixed fee for taking bids, the amount of such fee should be specially arranged with him before the sale. In some parts of the country there is a recognized scale for such fees.

Public Auction.—*Particulars.*—It is not within the scope of this work to point out in detail what should be

[1] *Re Peace and Ellis*, 36 W. R. 61; *Re Newbould*, 14 App. Ca. 1.
[2] *Burd* v. *Burd*, 40 Ch. D. 628.
[3] *Drielsma* v. *Manifold*, (1894) 3 Ch. 100.
[4] *Childitch* v. *Jones*, (1896) 1 Ch. 42.

stated in the particulars or conditions of sale, as so much depends upon the title. But a solicitor cannot state too plainly and distinctly in the particulars the nature and tenure of the property and the burdens thereon, and the exact estate or interest offered for sale where it is less than a fee simple, and, in fact, everything that a man intending to purchase ought in fairness to be made acquainted with.

Notice of any adverse claim known to the vendor and not clearly unfounded—such as a claim by a stranger to the ownership of a wall—should be given.[1]

All facts which are stated should be accurately stated, and no material fact should be omitted. Above all, no attempt must be made to entrap or mislead a purchaser by any untrue or unfair statement.

If any plans are printed with the particulars, care should be taken to see that they are sufficiently accurate to render it impossible for them to mislead a man of ordinary intelligence who looks at them for information as to the property.

In preparing or settling particulars of sale great care should be exercised, as a misdescription may be taken advantage of by an unwilling purchaser to get rid of the contract, or obtain an abatement of his purchase-money by way of compensation. For instance, suppose property is described as being held under a lease, when it is in fact held under a sub-lease, a Court of Equity will not decree specific performance[2] unless it can reasonably be inferred from the particulars and conditions together that an underlease only is intended to be sold.[3] The same rule applies where copyholds are described as freeholds,[4] where onerous covenants in a lease are not

[1] *Re Harris and Rawlings*, W. N. (1894), 19.

[2] *Brumfit* v. *Morton*, 9 Jur. (N. S.) 1198.

[3] *Camberwell Benefit Building Society* v. *Holloway*, 13 Ch. D. 754; *Re Beyfus and Masters*, 39 Ch. D. 110; *Waring* v. *Scotland*, 36 W. R. 756.

[4] *Hart* v. *Swaine*, 7 Ch. D. 42.

disclosed,[1] and generally to cases where misdescription induces a purchaser to enter into a contract which he would otherwise have avoided. A condition to the effect that any misdescription shall not annul the sale does not apply to cases of material misdescription.

The law upon this subject generally may be summed up thus: If the particulars of sale fully and accurately describe the property and the tenure, and the vendor's interest therein, so that a person of ordinary intelligence may not fail to discover precisely what is intended to be sold and conveyed, there will be little fear of any objection being maintained.

Public Auction.—*Conditions.*—In the conditions of sale, equal clearness and distinctness are requisite in stating upon what terms the property is to be disposed of, and what the purchaser is, and what he is not, to be at liberty to require.

Before attempting to settle either particulars or conditions of sale, it would be advisable to read that part of Dart's "Vendors and Purchasers" which relates to this branch of the subject.[2] Much useful information may also be obtained by a perusal of Mr. Turner's first two lectures on the same subject.[3]

The particulars having been carefully settled, the conditions of sale must be drawn, and in order to do this it will be necessary to investigate the title carefully.

If the estate be a large one, or the title complicated, it may be advisable to lay the abstract before counsel, with instructions to prepare the conditions of sale. Indeed, in many cases it will be by far the best, and in the end the least expensive, course to give a fee to counsel to settle the conditions, as it is next to impossible for any one in a solicitor's office (even if he feels that he possesses the requisite knowledge), engaged in

[1] *Re White* v. *Smith*, (1896) 1 Ch. 637.

[2] 6th ed. Chap. IV.

[3] Duties of Solicitor to Client, pp. 3—53.

various matters of business and liable to frequent interruptions, to bestow the amount of care and attention required in settling conditions for the sale of a large estate with a complicated and difficult title.

The young solicitor who himself drafts conditions will find it the most convenient, as well as the most logical, plan to arrange them in, as far as practicable, the same order as the occurrence of the events to which they relate. The common form conditions, which are used at almost every sale by auction, he will have no difficulty in copying from a precedent or from an old set of conditions used at a former sale. Or he may (if in the country) use the common form conditions of the local Law Society, which are sure to be well known in the neighbourhood. His difficulties will commence when he comes to deal with the special conditions rendered necessary or expedient by the title of the particular property to be sold. A special condition should never be used merely because it has been used at some previous sale. No condition should be used which is unnecessary, nor should any necessary condition be omitted.

And if the vendors are trustees, it should be remembered that the use of unnecessarily stringent conditions may not only enable an unwilling purchaser to rescind the contract, but may possibly induce a *cestui que trust* to apply for an injunction to restrain the intended sale.

To decide, in a given case, whether or not any particular condition is necessary, of course requires considerable knowledge of the principles of conveyancing.

After carefully reading the abstract of title, and making notes of all the defects which ought to be provided against, it is an excellent plan to read through two or three sets of old conditions, and also the special conditions in any standard book of precedents, and mark those which seem applicable.

In very many cases, it will be found that conditions

relating to most, if not all, of the following matters are required:—

(1.) Biddings—always required.
(2.) Deposit—always useful.
(3.) Delivery of abstract—generally desirable.
(4.) Time for requisitions and further requisitions—always required.
(5.) Commencement of abstract.
(5a.) *Here will follow the special conditions.*
(6.) Recitals (less than twenty years old) to be evidence.
(7.) Dower—sometimes required.
(8.) Unstamped deeds—sometimes required.
(9.) Unregistered deeds—sometimes required in Yorkshire and Middlesex.
(10.) Land tax—seldom required.
(11.) Compensation for errors—usual.
(12.) Identity—often required.
(13.) Terms of tenancies—seldom required.
(14.) Restrictive stipulations—often necessary on a sale of building land.
(15.) Time for completion—always necessary.
(16.) Parties to conveyance—seldom required.
(17.) Possession or apportionment of rents and outgoings—always desirable.
(18.) Interest after date for completion—always desirable.
(19.) Delivery of deeds—often necessary.
(20.) Failure to comply with conditions.

It will be seen that the condition throwing the cost of producing deeds, &c., on the purchaser and other conditions formerly in general use, are omitted in reliance upon § 2 of the Vendor and Purchaser Act, 1874, and § 3 of the Conveyancing Act, 1881.[1]

[1] Pp. 13, 14, *ante*.

The condition as to deeds should be carefully framed in the case of a sale in several lots. It should not entitle the largest purchaser in value to the custody of the deeds unless *all the property is sold at the auction*. In the event of any lot being bought in, the vendor should retain the deeds. For it is quite possible that parts of the property may remain unsold for many years.

The above list of conditions is by no means exhaustive; and it will usually be necessary to insert between No. 5 and No. 6 some special conditions suggested by a perusal of the abstract. The draftsman should remember that when a condition relating to a specified defect of title is used, the facts which give rise to the defect should be most accurately stated. When the property sold is intended for building purposes, it will be necessary to consider, carefully, whether it is advisable to provide (either in the particulars or conditions) that the purchasers shall enter into restrictive covenants as to building, in restraint of trade, and otherwise as to user. If purchasers are likely to build private residences of a good class, such restrictions may enable higher prices to be obtained. But they are a disadvantage to the vendor, if many of the lots fail to sell at the auction; and they may become disadvantageous to purchasers, unless the vendor reserves power to release or modify the restrictions. If such a power is reserved the question will arise whether it should apply to all the property or only to the portion retained by the vendor; and in the latter case, it may be reasonable to provide that it shall not apply to plots of land actually adjoining, or immediately opposite to, plots actually sold at the auction.[1]

In many cases only a few of the conditions specified in the above list will be required. Indeed, the short

[1] See and consider *Birmingham Land Co.* v. *Allday*, (1893) 1 Ch. 342.

form of conditions at p. 299 of this volume will sometimes be sufficient.

When allotments are sold under the Small Holdings Act, 1892,[1] they must be sold subject to the special restrictions prescribed by § 9.

Care should be taken to see that the name, or some unmistakeable description of the vendor, is stated either in the conditions or in the printed form of contract at the end; or he may find it impossible to enforce specific performance.[2]

Having settled the particulars and conditions of sale, the next step is to make a fair copy, and either forward it to the auctioneers to be printed, or send it direct to the printers. When the proof is obtained, it must be carefully examined in order to see that it is correct, and altered where necessary, and then returned to the auctioneer, or the printer. Having obtained a sufficient number of copies, the solicitor will forward some to the other solicitors in the town, and also to inns and other places for distribution; he will also prepare and have bills posted in the neighbourhood of the property.

It was formerly not the practice for country solicitors to have the conditions of sale printed and annexed to the particulars; the latter only being printed and distributed, and the conditions written out and read at the sale, as many copies being made as there were lots to be sold. But printing is now so cheap that this old inconvenient practice ought to be abandoned. It is only fair that an intending purchaser may know the conditions upon which he is to purchase, without hearing them read for the first time amidst the noise and confusion of the sale room. In some cases a sale is advertised subject to the common form general conditions of the local Law

[1] 55 & 56 Vict. c. 31.

[2] *Sale* v. *Lambert*, L. R. 18 Eq. 1; *Potter* v. *Duffield*, L. R. 18 Eq. 4; *Thomas* v. *Brown*, 1 Q. B. D. 714; *Rossiter* v. *Miller*, 3 Ap. Cas. 1124.

Society, and it is then only necessary to print the special conditions. Even in this case the special conditions should be printed, and not merely written upon a few copies of the common form conditions, as is too often done. In many places it is usual to advertise the particulars in the local newspaper, and to have a number of copies of such advertisement struck off on sheets of paper for distribution. This is a very useful plan.

Where the sale is of a large estate, or several closes of land, it is advisable to annex a plan to the particulars of sale, in order that the situation of the property and its advantages may be seen at a glance. And if an attractive-looking residence is on the land, it may also be desirable to have a lithographed drawing or photograph of it attached to the particulars. The auctioneer usually prepares the plan and sends it to the solicitor with the draft particulars of sale.

PUBLIC AUCTION.—*Sale.*—The particulars and conditions having been duly distributed and the day of sale having arrived, the vendor's solicitor will proceed to the place of sale to answer any question that may be put, either as to the property, the conditions, or otherwise. The auctioneer will usually get through this part of the business, and the solicitor will seldom be called on to interfere, but an intending purchaser will sometimes ask questions about the title, and the solicitor must then be guided by the circumstances of the case as to the course of proceeding; if he gives an answer to any question, it should be given readily and candidly, as it is far better not to give an answer at all than to answer in a manner calculated to show that the object is to conceal as much as possible. If leaseholds are being sold, a copy of the lease should be at hand ready for production. Indeed the conditions should contain a notice to that effect, with a stipulation that the purchaser shall be deemed to buy

with notice of its contents and effect. The same plan should be adopted on a sale of land held at a fee-farm rent, or subject to any unusual or restrictive covenants.

If the property be purchased, the auctioneer will see that the purchase contract at the end of the conditions is signed by the purchaser; and, if in London, he will also receive the deposit. In country sales the deposit is generally received and the contract signed by the vendor or his solicitor, and not by the auctioneer. It may save correspondence and delay if the purchaser is now asked for the name of his solicitor, in order that the abstract may be sent to him at once; but as in the hurry of the sale this may be forgotten, it will be found useful to put at the foot of the purchase contract these or similar words—"Abstract to be sent to ——;" in which case the auctioneer or solicitor, as the case may be, in obtaining the purchaser's signature to the contract, will make the necessary inquiry of him. A 6*d.* adhesive stamp must be put on the contract before either party signs it, except in cases governed by § 59 of the Stamp Act, 1891.[1]

Where the client pays the auctioneer, the vendor's solicitor must charge in detail for all work done up to and including attendance at the sale, and the scale fee for deducing title and subsequent work.

Abstract of Title.—The sale, whether by public auction or private contract, having progressed thus far, the abstract of title, if not already prepared, must now be prepared, and in any case a fair copy must be forwarded to the solicitor named by the purchaser, or, if he has not named a solicitor, to the purchaser himself, at his address in the contract; and, unless the abstract is delivered by a clerk or messenger, an acknowledgment

[1] 54 & 55 Vict. c. 39.

of its receipt should be requested, in order to know with greater certainty the time within which the purchaser, according to the conditions of sale, will be bound to forward his requisitions on the title. After the receipt of the abstract, the purchaser's solicitor will make an appointment for comparing it with the title deeds; this will be done at the office of the vendor's solicitor if the deeds are there, but if they are not (which will be the case if the vendor is a mortgagor or *cestui que trust*), they must be examined at the place where they may happen to be at the purchaser's expense.[1]

On comparing the abstract of title with the deeds, it is the practice, in London, for the purchaser's solicitor to take with him a clerk to read the abstract, while the practice in many parts of the country, as a matter of courtesy, is for a clerk in the office of the vendor's solicitor to read the abstract, unless the offices of the vendor's and purchaser's solicitors are in the same town, in which case the purchaser's solicitor sometimes takes a clerk with him. The scale fee includes the cost of production if the solicitor producing the deeds has the conduct of the sale. If not, a fee of 10*s.* per hour is charged. The vendor's solicitor must have the deeds ready at the time appointed, and, although he is not bound to be at hand himself, it may save future time and expense if he can make it convenient to do so, in case any inquiry should arise on any part of the title.

Replies to Requisitions.—The abstract, having been compared with the deeds, will be perused by the purchaser's solicitor, who will then send the requisitions (if any) on the title, which, if forwarded within the time limited by the conditions, must be answered; and in preparing the answers the vendor's solicitor will be

[1] 44 & 45 Vict. c. 41, § 3 (6): *Willett* v. *Argenti*, 60 L. T. 735.

guided by the conditions of sale. In some cases it may be necessary to lay the requisitions, with a copy of the abstract and conditions or contract, before counsel; but this necessity only arises in cases where the title is complicated. A great mistake is sometimes made by the vendor's solicitor in answering requisitions, *e.g.*, the purchaser's solicitor asks for particulars of the birth, marriage, or burial of a certain person. The vendor's solicitor simply replies that the certificate is not in his possession, and then proceeds to refer the purchaser to the Conveyancing Act, 1881,[1] § 3 (6). Now this is not such an answer as the purchaser has a right to expect; for, in the first place, the certificate should have been set out in the abstract, as it is quite as much a matter of title as any of the proceedings shown on the abstract, and in well-drawn abstracts this is done; and, in the next place, although the purchaser is to obtain the certificate and pay for it, he is entitled to call upon the vendor for information as to the place of birth, marriage, or burial in order that he may procure it himself. This mode of answering requisitions is frequently a source of expense and delay, and is neither courteous nor businesslike. It must be remembered that, though the purchaser may have to pay for the *production* of documents of title not in the vendor's possession, he is entitled to have a complete *abstract* of them at the vendor's expense.[2]

In many cases the next steps will be the preparation and approval of the conveyance, but others may arise in which some difficulties will first have to be surmounted; for instance, the purchaser's solicitor may insist upon being furnished with abstracts of documents referred to in the abstract of title, but not abstracted in chief, or may require the title to be carried further back, or

[1] 44 & 45 Vict. c. 41.

[2] *Re Johnson and Tustin*, 30 Ch. D. 42; *Re Ebsworth and Tidy*, 42 Ch. D. 34.

certain requisitions to be more satisfactorily answered; or he may insist on other covenants being entered into than those he is entitled to, or object to pay any interest on the purchase-money at the time of completing the purchase.

The conditions of sale or contract (if any) and the provisions of § 2 of the Vendor and Purchaser Act, 1874, and § 3 of the Conveyancing Act, 1881, should be carefully perused whenever a purchaser makes requisitions which the vendor's solicitor thinks unreasonable, in order to see if the purchaser can insist upon his demands; and it will be advisable to take the opinion of a conveyancer on the matter where the vendor's solicitor is doubtful as to the purchaser's right, as the delay and expense that would be occasioned by a long correspondence will be more unpalatable to the vendor than the fee to counsel for his advice. As a general rule the vendor is not bound to obtain information not in his possession[1]; but if he has obtained such information in order to supply a complete abstract, he should furnish it. In some cases it may be necessary to apply to the Court under § 9 of the Vendor and Purchaser Act, 1874. In other cases the vendor may prefer to take advantage of the stipulation, which ought to be found in the conditions, enabling him to rescind the contract if the purchaser presses a requisition which he is unwilling to comply with.[2] But this must be done promptly and *bonâ fide*.[3]

Sometimes questions are raised through ignorance or forgetfulness of the provisions of Lord Cranworth's Act,[4] the Vendor and Purchaser Act, 1874,[5] the Conveyancing Acts, 1881 and 1882,[6] the Married Women's Property

[1] 44 & 45 Vict. c. 41, § 3 (6).
[2] *Starr-Bowkett Building Society* v. *Sibun*, 42 Ch. D. 375.
[3] *Ashburner* v. *Sewell*, (1891) 3 Ch. 405; *Smith* v. *Wallace*, (1895) 1 Ch. 385.
[4] 23 & 24 Vict. c. 145.
[5] 37 & 38 Vict. c. 78.
[6] 44 & 45 Vict. c. 41; 45 & 46 Vict. c. 39.

Act, 1882, and the Settled Land Acts, 1882 to 1890,[1] § 12 of the Customs and Inland Revenue Act, 1889,[2] and the Trustee Act, 1893.[3] It should be remembered that the Conveyancing Act, 1881, repeals[4] §§ 11—30 of Lord Cranworth's Act as to mortgages executed after the 31st of December, 1881, and that the portions of Lord Cranworth's Act which were left unrepealed by the Conveyancing Act, 1881, viz., Parts I. and IV., are repealed as from the 1st of January, 1883, by the Settled Land Act, 1882, inasmuch as that Act and § 35 of the Conveyancing Act, 1881, contain provisions which practically supersede such portions. But as to mortgages executed between the 28th of August, 1860, and the 31st of December, 1881, Lord Cranworth's Act[5] confers powers of sale with ancillary powers on mortgagees of real estate, although there may be no express power in the mortgage. And, as to mortgages executed after the 31st of December, 1881, the Conveyancing Act confers still wider powers of leasing, selling, and giving receipts.[6] This Trustee Act, 1893,[3] enables new trustees of instruments dated either before or after the 31st of December, 1881, to be appointed, and empowers trustees of such instruments to give receipts. These provisions supersede §§ 27 and 29 of Lord Cranworth's Act.

Under the Trustee Act, 1893, an outstanding legal estate may be vested in a new trustee, or an order made vesting it in the vendor or purchaser, at a comparatively small expense, and, what is still better, in a reasonably short space of time.

Where a voluntary conveyance or settlement formed a link in the title, a purchaser often raised objections and either required the concurrence of the settlor or

[1] 45 & 46 Vict. c. 38; 47 & 48 Vict. c. 18; 50 & 51 Vict. c. 30; 52 & 53 Vict. c. 36; 53 & 54 Vict. c. 69.

[2] 52 & 53 Vict. c. 7. [3] 56 & 57 Vict. c. 53.

[4] § 71. [5] §§ 11—16. [6] §§ 18—22.

threatened to rescind the contract. He is not entitled to this.[1] And see, now, the Voluntary Conveyances Act, 1893.[2]

Draft Conveyance.—The requisitions having been disposed of, the vendor's solicitor will receive from the purchaser's solicitor the draft conveyance for approval. This he will peruse on behalf of the parties for whom he is concerned, and should there be any for whom he is not acting, he will forward the draft to their respective solicitors for approval. After it has been approved of on behalf of all parties, he will return it to the purchaser's solicitor; but, however great the number of solicitors concerned, the vendor's solicitor is the medium of communication between them all.

In perusing the draft on behalf of a vendor it is necessary to see that all recitals of documents and statements of facts are correct, that the vendor is not parting with any more of his property or any greater interest therein than he has contracted to sell; that the parcels are accurately described, that any reservations intended to be made on his behalf are correctly inserted; that any liabilities which the purchaser is to take upon himself are set out in the draft, and that the vendor does not, by implication or otherwise, enter into covenants of a more extensive character than he can be required to do. It is contrary to professional usage to alter the form of any recitals or statements in the draft, if they are correct in substance. The purchaser's solicitor may prepare his draft in any form he pleases, if the form he uses does not prejudice the vendor.[3] But he ought to avoid verbose and antiquated forms.

With regard to covenants, it must be remembered that if, *in a conveyance for valuable consideration*, the vendor

[1] *Noyes* v. *Paterson*, (1894) 3 Ch. 267. [2] 56 & 57 Vict. c. 21.
[3] See cases cited, p. 75, *post*.

conveys "as beneficial owner," full covenants for title are implied by virtue of § 7 of the Conveyancing Act, 1881,[1] while a covenant against incumbrances is implied in *any* conveyance by every person who conveys as "trustee," as "mortgagee," as "personal representative," of a deceased person, or as "committee" of a lunatic. The whole of this section should be carefully read, as it contains provisions applicable not only to conveyances on sales strictly so called, but to various other instruments.[2] Care must be taken to use the exact words of the Act. The writer has seen drafts in which "as executor of" X. appeared instead of "as personal representative of" X. This is clearly wrong, and quite ineffectual.

In some cases clauses ought to be inserted modifying the implied covenants, *e.g.*, in a conveyance by tenants in common and in a conveyance of the fee simple by a tenant for life under the Settled Land Act, 1882.[3]

In an assignment of leasehold property, the vendor's solicitors should, still, see that the usual covenant by the purchaser to pay the rent, perform the covenants, and indemnify the vendor against future breaches, is inserted.

Formerly, in cases where trustees had no special power to give receipts, it was usual to take covenants for title from beneficial owners who did not convey: but as all trustees for sale can now give valid receipts,[4] this precaution is unnecessary. Where, however, a beneficial owner joins in a conveyance, in order to direct, and is expressed "as beneficial owner" to direct, the person in whom the legal estate is vested to convey, full covenants for title by him will be implied. The adoption of the provisions of § 7 of the Conveyancing Act, 1881, is not

[1] Greenwood's R. P. Statutes, 2nd ed. pp. 220 *et seq.*
[2] 44 & 45 Vict. c. 41, § 7.
[3] See the form at p. 353, *post*.
[4] 56 & 57 Vict. c. 53, § 20.

compulsory; and, therefore, if a purchaser prefers to have the appropriate covenants for title set out in the conveyance, he is entitled to do so, unless a stipulation to the contrary is contained in the contract or conditions of sale.

Covenants for production and safe custody of deeds can no longer be required. The purchaser is entitled to possession of the title deeds, unless they are not in the vendor's possession or relate to an estate part of which the vendor retains, in either of which events he is entitled to attested copies at his own expense, and also to an acknowledgment of his right to production and delivery of copies of the deeds so retained either by a beneficial owner or a trustee, and also to an undertaking for safe custody when the deeds are retained by a beneficial owner. Trustees and mortgagees do not give this undertaking, though they give the acknowledgment.

Completion.—The draft being finally approved of by all the solicitors concerned, and returned to the purchaser's solicitor, will be engrossed by him and forwarded with the engrossment to the vendor's solicitor for examination; and after he has compared it with his own copy of the draft, he will send the draft and engrossment to the other solicitors (if any) who have approved of it, in order that it may be examined by them, and this will be a convenient time for getting the deed executed by those (if any) who are merely consenting or nominal parties to it, as the solicitors who have approved of the draft on behalf of such parties will readily get the deed executed while in their hands. After the engrossment has been examined, it will be returned to and kept by the vendor's solicitor until an appointment is made for the completion of the business. This appointment is usually made by the purchaser's solicitor, but the completion of a purchase always takes place at the office of

the vendor's solicitor, unless the property be in mortgage, in which case the completion is at the office of the mortgagee's solicitor, the rule being that "the money follows the deeds." But where the equity of redemption is sold to a mortgagee, the completion takes place at the office of the vendor's solicitor. On receiving an appointment, the vendor's solicitor must arrange for the attendance of such of the parties interested as have not previously executed the deed. Respecting the completion, the chief points necessary to call attention to are to have the rates and taxes and other outgoings (if any) and the current rent properly apportioned and the balance ascertained, and to have the interest payable (if any) calculated, deducting the income tax in all cases except on a sale under the direction of the High Court of Justice, in which case the income tax is not deducted unless the conditions expressly authorize the deduction, which they now usually do. If they do not, the purchaser must pay interest in full, and may apply for the deduction when the money is paid out of court.[1]

Completion.—*Interest.*—If it should happen that no time is fixed for completion, the purchaser is entitled to take the rents and profits from the date of the contract if he thinks fit, as that is a conversion in equity, and if he does so the vendor is entitled to interest on the purchase-money at the rate specified in the contract or conditions, or if no rate is specified, at 4*l.* per cent. per annum from the same date until completion. But the purchaser is not bound to take the rents or to pay interest until the time when a good title is shown. If a time be fixed for completion and the purchase is not then completed, the purchaser takes the rents and profits from that time, paying the vendor interest on the purchase-

[1] *Bebb* v. *Bunny*, 1 Kay & J. 216.

money, unless the delay in the completion has arisen on the part of the vendor, and the purchase-money has been lying idle with notice to the vendor of that fact.

Where the conditions of sale state that interest shall be paid, if "from any cause whatever," or "if from any cause whatever other than the wilful default of the vendor," the purchase is not completed by a certain day, the purchaser must make out a strong case in order to succeed in his objection to pay interest, and must show that considerable delay has been caused by gross negligence, vexatious conduct, or bad faith on the part of the vendor or his solicitor.[1] If any part of the property is in mortgage, proper notice must be given to the mortgagee, or, on a delay in completing, the vendor may be liable to a further payment.

Money arising from a sale by a limited owner under the Settled Land Act, 1882, must be paid to the trustees of the settlement, or into Court, at the option of the limited owner, and the receipt of the trustees is a good discharge to a purchaser.

When purchase-money is payable to two or more trustees, the purchaser is entitled to insist upon the personal attendance of *all* the trustees to receive the money, unless they direct payment to the credit of their joint account at a bank,[2] or to a banker or solicitor under § 17 of the Trustee Act, 1893.[3]

After the execution of the conveyance it governs the relationship of the parties, and is *primâ facie* evidence of their intention; but if, by mistake, it fails to carry out their intention, it may be rectified by the

[1] *Bannerman* v. *Clarke*, 3 Drew. 362; 26 L. J. Ch. 77; *De Visme* v. *De Visme*, 1 Mac. & G. 336; 1 Hall & T. 408; *Williams* v. *Glenton*, L. R. 1 Ch. 200; *Re Wilson and Stevens*, (1894) 3 Ch. 546; *Re London and Tubbs*, (1894) 2 Ch. 524.

[2] *Re Bellamy*, 24 Ch. D. 387; *Re Flower*, 27 Ch. D. 592.

[3] 56 & 57 Vict. c. 53.

Court upon proper evidence of what such intention, in fact, was.[1]

Completion.—*Generally.*—The deeds, if to be given up to the purchaser, are put in order according to date, so that his solicitor may easily check them with the abstract; and should the sale of the property have been by public auction and a deposit paid to the auctioneer, a written authority will also be taken from the purchaser or his solicitor to the auctioneer, to hand over the deposit to the vendor or his solicitor. Many solicitors require the purchaser or his solicitor to sign a schedule of the deeds handed over to him.

The purchaser cannot now require the conveyance to be executed in his presence; but may have it attested by any person appointed by him.[2]

If any building on the property contracted to be sold should be burnt down pending completion (it having been insured by the vendor), the purchaser is not entitled to the benefit of the insurance in the absence of an express stipulation to that effect in the contract.[3] He must, nevertheless, complete the purchase, and pay his purchase-money. But, as a policy of insurance is merely a contract of indemnity, the vendor cannot, after receiving the purchase-money under such circumstances, recover the amount secured by the policy from the insurance company.[4] The vendor, therefore, loses nothing by agreeing that the purchaser shall have the benefit of any subsisting insurance, while the advantage to the purchaser of such a stipulation in the event of a fire before completion is manifest.

[1] *Ellis* v. *Hills*, 67 L. T. 287.

[2] 44 & 45 Vict. c. 41, § 8.

[3] *Poole* v. *Adams*, 12 W. R. 683; 33 L. J. Ch. 639; *Rayner* v. *Preston*, 14 Ch. D. 297.

[4] *Castellain* v. *Preston*, 11 Q. B. D. 380.

If the vendor is a lessee or assignee holding under a lease which contains a covenant not to assign without the lessor's licence, it is incumbent on him to obtain such licence, unless otherwise provided in the contract.[1] If such a licence is unreasonably or vexatiously refused, the lessee may assign without any licence; but, of course, if the lessor attempted to re-enter and terminate the lease on the ground of breach of the covenant, the onus of proving that the refusal was unreasonable would be upon the lessee or his assignee. It must be borne in mind that this particular breach is excluded from § 14 of the Conveyancing Act, 1881,[2] which enables the Court to relieve against forfeiture in certain cases. The lessor cannot impose a fine as a condition of giving a licence, unless the lease expressly authorizes him to do so; but he may require the payment by the lessee of any legal or other expense which he reasonably incurs in relation to such licence.[3] While on this point, attention should be called to the sixth section of Lord St. Leonards' Act, 1860,[4] which enacts that the waiver of the benefit of any covenant by a lessor shall be good for that turn only, and not be considered a general waiver.

Where a railway company purchases land *by agreement*, the company is not bound to pay the vendor's costs unless the agreement so provides; but when a company or public authority takes land under the *compulsory* powers of the Lands Clauses Consolidation Act, 1845, the whole of the vendor's costs are thrown upon the company by § 82 of that Act, and also the cost of investing the purchase-money when paid into Court, as it must be if it exceeds 200*l.* in the case of a conveyance by a limited owner under § 7 of that Act. It sometimes happens

[1] *Lloyd* v. *Crispe*, 5 Taunt. 249; *Mason* v. *Corder*, 7 Taunt. 9.
[2] Greenwood's R. P. Statutes, 2nd ed. p. 238.
[3] 55 & 56 Vict. c. 13, § 3.
[4] 23 & 24 Vict. c. 38.

that the vendor dies before the conveyance to the company is executed, leaving an infant heir; in this case the company is not bound to pay the costs of getting the estate out of the infant. In order to avoid the expense of payment into Court and re-investment, it is now usual for railway companies to take conveyances under the Settled Land Act, 1882, instead of under the Lands Clauses Consolidation Act, 1845, when that course is practicable.

Before leaving this chapter, it may be well to call attention to a species of document which is at the same time a conveyance and mortgage. On the purchase of a coal-mine, where the consideration money is payable by instalments, and powers of distress and entry are given to secure payment of the instalments, the practice is for the vendor's solicitor to prepare this document, and for his charges to be paid by the purchaser, except of course such charges as relate to the abstract and proving the title, which are borne by the vendor in the usual manner. It may be doubted whether the powers of distress and entry are valid unless the document is registered as a bill of sale. It was at one time thought that these powers took away from the instalments their character of unpaid purchase-money, and made them a species of rent, and therefore, like rent, subject to income tax. But it has been decided that income tax cannot be deducted from the instalments, that, in fact, the instalments are unpaid purchase-money and not rent.[1] When instalments representing both principal and interest are paid to a building society by a mortgagor, he may deduct income tax on so much of each instalment as represents interest.[2]

[1] *Taylor* v. *Evans*, 25 L. J. Exch. 269; *Foley* v. *Fletcher*, 28 L. J. Exch. 100.

[2] *Ex parte Wythes*, 53 L. T. 492.

CHAPTER III.

PURCHASES OF REAL ESTATE.

INTRODUCTORY.—When a solicitor is professionally concerned for a purchaser or an intending purchaser, it is usually in one of the following cases:—

(*a*) Where the client has already signed a binding contract in writing for the purchase of land, otherwise than by correspondence. This will often prove to be an open contract; for an intending purchaser is not so likely to sign a contract containing a number of special stipulations, as a simple open contract, without first consulting his solicitor.

(*b*) Where the client has already entered into what is asserted to be a binding contract evidenced by letter or telegram.

(*c*) Where the client has been treating for or verbally agreed to purchase land, and instructs his solicitor to peruse and settle the draft contract on his behalf.

(*d*) Where the client proposes to bid at a forthcoming sale by auction, and brings a print of the particulars and conditions to his solicitor for advice thereon.

(*e*) Where the client has already purchased land at a sale by auction, and signed the contract annexed to the conditions.

In each of the cases above mentioned the course of proceeding will be different, and it will be convenient, as in the chapter on Sales, to deal with them separately.

Open Contract.—If a client has entered into an open contract for the purchase of an estate, his solicitor's duty is to apply to the vendor's solicitor for an abstract of title, as soon as he has satisfied himself that the document which has been signed is a memorandum of a contract binding upon the vendor. The vendor's solicitor is not unlikely to suggest the preparation of a more formal contract containing various additional stipulations. But as an open contract is the most favourable one to a purchaser usually entered into, the purchaser's solicitor will not, as a rule, assent to such a proposal unless he has some doubt as to the validity of the document already signed, or unless that document provides for the preparation of a more formal contract.

Having received the abstract, the purchaser's solicitor must, first, see that it deduces not merely a safe holding title, but a marketable—*i.e.*, a forty years' title. In some cases, where the vendor cannot furnish so long a title as the purchaser is entitled to, the purchaser may be willing to accept a shorter one, especially if he is very anxious to obtain the property, and is not buying for investment. In such a case his solicitor should take care to explain to him, in writing, what his legal rights are, and to have his express instructions—also in writing if practicable—to waive them.

Under an open contract, the expense of everything the purchaser might be entitled to in order to verify the title must formerly have been borne by the vendor, and the purchaser may still call upon the vendor to verify the title at his own expense, so far as he has in his own possession the means of doing so. But the purchaser must, by virtue of § 3 of the Conveyancing Act, 1881, pay the expenses of producing and inspecting all muniments and obtaining all evidence and information not in the vendor's possession. And where the vendor retains possession of any document (as he is entitled to do if he does

not sell the whole of the property to which they relate), the purchaser must bear the expenses of any attested or unattested copy which he may require. As to what title should be shown under an open contract, and as to what evidence is necessary to support it, reference should be made to Dart,[1] to the Vendor and Purchaser Act, 1874,[2] and to the Conveyancing Act, 1881.[3]

PRIVATE CONTRACT.—*Contract by Letters.*—When a client informs his solicitor that he has entered into a contract by means of letters, or letters and telegrams, it will be necessary to peruse the correspondence attentively in order to see whether a binding and enforceable contract has been entered into, or whether the correspondence merely amounts to negotiation for a contract. And in order to decide this question the whole correspondence must be looked at, even though one or two isolated letters, taken by themselves, may appear to contain the terms of a complete contract.[4] But if two letters contain all the terms that have, at that time, been agreed, and such terms are sufficient to constitute a complete contract, the fact of subsequent negotiation about minor matters will not prevent the Court from enforcing the contract.[5]

A contract by means of letters requires two things—namely, a definite offer and a clear acceptance; and an offer may be withdrawn at any time before acceptance, even though a specific time is stipulated for during which it is intended that it shall remain open.[6] But an offer is accepted as soon as a letter accepting it is posted, although such letter may never reach its destination,[7]

[1] 6th ed. Chaps. VIII. and IX.
[2] Greenwood's R. P. Statutes, 2nd ed. p. 193.
[3] *Ibid.* p. 212, *ante*, pp. 13, 14.
[4] *Hussey* v. *Horne-Payne*, 4 App. Ca. 311.
[5] *Bellamy* v. *Debenham*, 45 Ch. D. 481; (1891) 1 Ch. 413.
[6] *Cooke* v. *Oxley*, 3 T. R. 653; *Dickinson* v. *Dodds*, 2 Ch. D. 463.
[7] *Dunlop* v. *Higgins*, 1 H. L. C. 381; *Harris' Case*, L. R. 8 Ch. 587.

and although a withdrawal may cross it in the post.[1] If an offer is clogged with a particular condition, and an answer is returned accepting the offer but rejecting the condition, that alone will not form a contract; or if an offer be made and an answer returned accepting the offer, under certain conditions, or enclosing a draft contract containing additional stipulations,[2] that alone is not a contract, although in both cases it would be if a third letter were sent simply accepting the last preceding offer.[3]

It must also be remembered that, although letters or other memoranda in writing may contain all the essential terms of a contract, the Court will consider them as negotiation only, if upon the face of them it is clear that the parties, or either of them, contemplated the preparation and signature of a more formal contract containing additional stipulations, and did not intend to be bound until this had been done.[4] But a mere reference to an intended formal contract will not have this effect where the documents already signed contain all the terms agreed upon, and are sufficient to satisfy the requirements of the Statute of Frauds.[5]

When it is intended that letters shall be treated as negotiation only and not as evidence of a contract, it is advisable to make a statement to that effect in the first letter, and to add that neither party shall be bound till a formal contract has been signed.

[1] *Henthorn* v. *Fraser*, (1892) 2 Ch. 27.

[2] *Jones* v. *Daniel*, (1894) 2 Ch. 332.

[3] *Hudson* v. *Buck*, 7 Ch. D. 683; see also *Munday* v. *Asprey*, 13 Ch. D. 855. See also *Honeyman* v. *Marryatt*, 21 Beav. 14; 26 L. J. Ch. 619; and 6 H. L. C. 112; *Ridgway* v. *Wharton*, 6 H. L. C. 264; *Lewis* v. *Brass*, 3 Q. B. D. 667.

[4] *Chinnock* v. *Ely*, 4 D. J. & S. 638; *Crossley* v. *Maycock*, L. R. 18 Eq. 180; *Smith* v. *Webster*, 3 Ch. D. 49; *Winn* v. *Bull*, 7 Ch. D. 29; *May* v. *Thompson*, 20 Ch. D. 705; *Bristol, &c. Co.* v. *Maggs*, 44 Ch. D. 616; *Bellamy* v. *Debenham*, (1891) 1 Ch. 419; *Jones* v. *Daniel*, (1894) 1 Ch. 332.

[5] *Gibbins* v. *N. E. M. Asylums*, 11 B. 1; *Bonnewell* v. *Jenkins*, L. R. 8 Eq. 70; *Bolton* v. *Lambert*, 41 Ch. D. 295; Fry, Spec. Perf. 3rd. ed., pp. 240—242.

On being satisfied that the letters contain the terms of a complete contract, the purchaser's solicitor must carefully ascertain what conditions they contain as to title or evidence of title, completion, and other matters, and if the stipulations are numerous it may be advisable to make an analysis of them.

Some of the most difficult cases which come before a solicitor are those in which correspondence is relied upon as containing the terms of a binding contract. When both parties are desirous of carrying the supposed contract into effect, the matter may go through smoothly enough; but if either of them contends that he is not bound, and declines, to do so it will usually be necessary to take the opinion of counsel, and often to bring an action for specific performance.

PRIVATE CONTRACT.—*Generally.*—We will now suppose that a client informs his solicitor that he has verbally agreed to purchase an estate, and that he wishes him to act for him. In such a case the solicitor should write to the vendor asking him to instruct his solicitor to send the draft of the proposed contract for perusal on behalf of the purchaser. As before stated, it is the practice for the vendor's solicitor to prepare the contract, he being of course acquainted with the title and the stipulations necessary to protect his client. When the draft is received the purchaser's solicitor should go through it with his client, in order to see that the amount of purchase-money, the nature and extent of the vendor's interest, the situation and extent of the property, the burdens upon it, and the time of completion, are correctly stated, as these matters are for the client's consideration. The solicitor's duty is to advise him as to the nature and effect of the clauses in the draft. In many instances these clauses will be similar to those in ordinary conditions of sale, but this is unfair to the purchaser, as there

is a material difference between purchasing an estate at an auction and purchasing one by private contract; in the former case the purchaser knows the terms under which he is buying before making a bid, and is sometimes content to purchase even under stringent conditions, either in the hope that he may make a good bargain, or because he has taken a fancy to the property; but in the latter case there is no chance of getting a bargain, the terms as to price being agreed upon between the vendor and purchaser with their eyes open, and as generally the latter is compelled to give the full market value of the property he has a right to require a marketable title to be shown at the vendor's expense, except so far as the law itself now throws such expense upon the purchaser; and he also has a right to demand that the title shall be carried back for the statutory period of forty years. In this case, however, as in many others, some tact is often required; the vendor may be an over-reaching man and the purchaser may not, but, on the contrary, he may be so desirous of becoming the purchaser of the property that he may not feel disposed to pay much attention to what he may consider technical objections. Under such circumstances the solicitor should explain to his client (in writing if practicable) the consequences of his entering into such a contract as is offered to him, and the meaning of the clauses in it. If he elects, notwithstanding all advice, to become the purchaser on such terms, he is at perfect liberty to do so, he runs the risk and incurs the expense; the solicitor will have performed his duty, and the matter will proceed. In some cases it may be desirable to stipulate, on behalf of the purchaser, that the vendor's adjoining land shall not be used as a road, or that the vendor will indemnify the purchaser against all liability to contribute to the expense of making, paving, sewering, and repairing any such road. It should be remarked that under an open contract for sale of lease-

holds the purchaser is no longer at liberty to investigate the title of the lessor.

The two previous chapters contain full information with respect to the preparation and completion of the contract.

It should, however, be mentioned, that until a contract is reduced into writing and signed (either in letters or some other document) neither party is bound.

PUBLIC AUCTION.—*Conditions of Sale.*—It often happens that a client brings to his solicitor the conditions of an intended sale in order to be advised thereon; that is, he wishes to know whether he may safely purchase under them. In such case, the solicitor's duty is to some extent the same as when he peruses and advises his client on the provisions of a draft contract.[1] It is necessary to look carefully over the conditions; and although the client will probably stop while this is being done, it is most important that the solicitor should not "lose his head." It is a very common practice in such cases for a young solicitor to glance slightly over the conditions and hand them to the purchaser, saying, "They appear all right," or using some similar expression; the fact being that, owing to his client's presence, or his own inability to discover what is really intended to be met by the conditions, he has not given the matter the consideration it deserves. Another very common practice on the part of a young professional man is to strive to obtain a reputation for superior quickness and penetration, and although these qualities are very excellent, the reputation of possessing them ought not to be obtained at the expense of a client; for, however quick in perception a young solicitor may be, he will find that many conditions of sale used at the present day require all the consideration he can give to them before he is

[1] See p. 47, *ante*.

able to form a correct opinion as to their meaning or effect. If his client, relying on his representation that a fair title can be insisted upon under the conditions of sale, becomes a purchaser, and a defect afterwards appears which has been successfully guarded against by the conditions, and which a man of fair experience ought to have foreseen, the solicitor will be placed in a very awkward position, and at the least will probably lose his client, in addition to which he may have to compensate him for his loss. It is far better, in such a case, if, from the general tendency of the conditions, it appears that some defect in the title is attempted to be covered, to inform the client so at once, and if he still desire to purchase, to offer to accompany him to the place of sale, and when there, put such questions to the auctioneer or the vendor's solicitor with respect to the particular objection as may seem advisable. From the answers given (although they, of course, will not vary the terms of the conditions), it will probably be easy to advise the intending purchaser what course he had better adopt; and should he be a trustee, the proper course will be to advise him not to purchase, unless the objectionable condition is struck out or modified. Indeed, a trustee should never be advised to buy at all, unless the conditions are such as to entitle him to a marketable title.

When leasehold property is sold by auction the conditions often contain a provision to the effect that the lease may be inspected prior to the day of sale, and that the purchaser shall be deemed to have notice of its contents and effects. In such a case, the intending purchaser's solicitor should carefully inspect it, and also ask to see copies of any underleases or tenancy agreements, and should not only explain the nature and effect of the covenants and other provisions of these documents to his client, but call his special attention to any unusually

restrictive covenants, and to any variations between the terms of the lease and those of the underleases or agreements.

When a client has already purchased property at an auction, and brings the conditions of sale and purchase contract to his solicitor, the course to be taken by the latter will be very simple. He will, in the first place, write to the vendor's solicitor for an abstract of the title, and in the meantime diligently peruse the conditions of sale, in order to ascertain what title the purchaser may require, and what restrictions are imposed on him. It may turn out that a serious defect in the title is attempted to be covered by a loose condition, framed in such a manner that a non-professional man on reading it would be thrown off his guard, but yet apparently of sufficient stringency to cover the defect; in this case it is necessary to consider whether the condition is so framed that, by reading it, a man of ordinary intelligence may discover what is intended to be guarded against. If it is so framed, the purchaser will be bound by it, whatever may be its effect; if, on the contrary, it is framed in an obscure manner, and with an evident intention to mislead a purchaser, or is so loosely framed that the meaning of it cannot be easily understood, a Court of Equity would probably refuse to enforce specific performance.[1] It may be that a condition requires the purchaser to assume what the vendor knows to be contrary to the fact. In such a case the condition will not be binding. But if a condition gives fair notice of a possible defect, and stipulates that no objection or requisition shall be made in respect of it, a person who buys under such a condition will be bound by it.[2]

[1] *Gardiner* v. *Tate*, Ir. R. 10 C. L. 460; *Jones* v. *Rimmer*, 14 Ch. D. 588; *Torrance* v. *Bolton*, L. R. 8 Ch. 118; *Re White* v. *Smith*, (1896) 1 Ch. 637.

[2] *Best* v. *Hamand*, 12 Ch. D. 1; *Re Bannister*, *Broad* v. *Munton*, 12 Ch. D. 131. See and compare *Scott* v. *Alvarez*, (1895) 2 Ch. 603.

In many instances a purchaser, whatever may be the state of the title, is so eager to become the owner of the property, that he will pay but slight attention to any caution that may be given him. If such a case arises, his solicitor should take care to have some letter or other writing, showing that he brought the objection to his notice, and that, with a full knowledge of the effect of it, he thought fit to waive it.

It will be sufficient here to draw attention to the importance of carefully weighing the effect of the conditions under which a client has purchased, before proceeding to peruse the abstract of title, as, after some little experience, it will be easy to discover what sort of title may be expected, merely by reading the conditions of sale; and if they are of a stringent character, extra vigilance should be excited when perusing the abstract.

If a client has contracted to purchase property consisting to any material extent of buildings—whether freehold or leasehold—it is advisable either to obtain some memorandum from the vendor giving the purchaser the benefit of any existing insurance, or to advise the purchaser to insure immediately; for if the property be burnt down before completion, the vendor may compel the purchaser to pay the purchase-money, without getting anything but such ruins as may be left for his money.[1] And although the vendor can recover nothing from the insurance company,[2] that fact will be no consolation to the purchaser for his loss, unless the company (as an act of grace and favour) should recognize the purchaser's moral claim to compensation.

Verifying Abstract.—We will now assume that everything has been done respecting the contract; that it is

[1] *Poole* v. *Adams*, 12 W. R. 683; 33 L. J. Ch. 639; *Rayner* v. *Preston*, 14 Ch. D. 297.

[2] *Castellain* v. *Preston*, 11 Q. B. D. 380.

complete, and that the abstract of title has been forwarded by the vendor's solicitor. The first point requiring attention will be the time limited (if any) by the contract or conditions for sending in requisitions on the title, for if a short time is limited, and time is made of the essence of the contract—as is often the case—it will be necessary to use dispatch in perusing and verifying the abstract. Having received the abstract, it is of advantage to cursorily peruse it, in order to obtain a general view of the title. This will be of assistance on afterwards comparing the abstract with the deeds. The vendor's solicitor should then be written to, to make an appointment at his office for comparing the abstract with the deeds, and if any of them are not in his possession he will give information as to where they may be examined. The purchaser must bear the expense of any journey which it may be necessary for his solicitor to take in order to compare the deeds with the abstract, if the deeds are not in the possession of the vendor or his solicitor.[1] The appointment having been made, the purchaser's solicitor will proceed at the time appointed to the place where the deeds are to be found, and if in London will take a clerk with him, but if in the country a clerk of the vendor's solicitor will usually assist him, unless both solicitors practise in the same town. This, however, is done as a matter of courtesy, and cannot be insisted upon or claimed as a right. The usual course is for the clerk to read the abstract slowly while the solicitor looks at the deeds, taking care first to mark the amounts of the stamps under the dates of the deeds in the abstract. It is customary to mark all the stamps in the abstract, as well followers as *ad valorem* and other stamps; but it is useless to mark the number of followers; the principal thing is to see if the *ad valorem*

[1] 44 & 45 Vict. c. 41, § 3 (6).

duty is correct, and also that any other stamps required by the Stamp Act are affixed. In examining any deed or "release" conveying real estate, dated between the 15th of May, 1841, and the 1st of October, 1845, care must be taken to observe that reference is made in the deed to the "Act for making a Release as effectual as a Lease and Release by the same Parties,"[1] and also that a 35*s.* stamp in lieu of the stamp previously required on the lease for a year which preceded the release, is impressed on the release; but between the latter date and the 10th of October, 1850, it will only be necessary to see that an extra stamp of 35*s.* is impressed on the release, pursuant to § 2 of the Act to amend the Law of Real Property,[2] which made freeholds lie in grant as well as in livery. A conveyance dated subsequently to the 10th of October, 1850, does not require the extra 35*s.* stamp, as the last-mentioned Act was repealed by the Stamp Act, 1850.[3] The person who compares an abstract of title with the deeds should have a fair knowledge, not only of the theory, but also of the practice of conveyancing. Instances have occurred where, at the end of a very long will, and at a place where few would have expected to find anything of the sort, a most important clause has been put in, materially affecting the interest of the person dealing with the property. This has probably arisen in the following manner:—After the will had been settled by counsel, the client, on its being read over to him, has thought of some modification of a prior interest or power, and the solicitor, fearing that by inserting it earlier he might interfere with the effect of the preceding clauses, has put it in at the very end; a safe course probably for himself, but likely to be very prejudicial to a future purchaser who has to rely upon

[1] 4 & 5 Vict. c. 21. [2] 8 & 9 Vict. c. 106.
[3] 13 & 14 Vict. c. 97, § 6.

a careless examination of the abstract with the muniments of title. On arriving at the end of a deed, care should be taken to see that it is executed by all proper parties and duly attested, and that on deeds dated earlier than 1st January, 1882, the receipt for the consideration money is indorsed, signed, and witnessed; and if a married woman be a party, otherwise than in respect of her separate property, or the exercise of a power of appointment, that the deed has been duly acknowledged under the Fines and Recoveries Abolition Act,[1] and that the official certificate is attached. It is always better to insert in the abstract the actual number of witnesses to each deed, as the deed may have been made in exercise of a power requiring two or more witnesses to its execution. As to powers exercised by will since the 1st of January, 1838,[2] and by deed since the 13th of August, 1859,[3] two witnesses are sufficient, although the power which is exercised by it may prescribe a larger number. It should also be observed whether there is any irregularity as to the position of the receipt for the consideration money,[4] and in such a case a note to that effect should be made in the margin of the abstract. If the estate be in Middlesex or Yorkshire, the usual memorandum of the registration of the deed should be found indorsed on the back of it, and the reference to such memorandum should be inserted at the foot of the abstract of the deed, if not already done; and if the property be subject to the operation of the Bedford Level Drainage Act,[5] it should be seen that the requisites of that Act have been complied with.[6] Also,

[1] 3 & 4 Wm. 4, c. 74.
[2] Wills Act, 7 Wm. 4 & 1 Vict. c. 26, § 10.
[3] Lord St. Leonards' Act, 22 & 23 Vict. c. 35, § 11.
[4] *Kennedy* v. *Green*, 3 My. & K. 699; *Greenslade* v. *Dare*, 20 Beav. 284.
[5] 15 Car. 2, c. 17.
[6] But see *Willis* v. *Brown*, 10 Sim. 127.

where any succession duty or estate duty is payable, evidence of its having been paid should be furnished now or in the replies to requisitions. If the receipts or certificate proving such payment are not produced upon the examination of deeds, a note should be made in the margin of the abstract.

Perusing Abstract.—Having compared the abstract with the deeds, the next step is to examine the stamps which have been marked in the margin of the abstract, to see if they are correct; after which the abstract must be perused and the necessary requisitions prepared. If the purchaser's solicitor does not feel competent to peruse the abstract, or if it be very long and intricate, or any doubtful questions arise on it, or the property be of great value, the best course will be to lay it before counsel, with instructions to peruse it and advise on the title. The abstract should be accompanied by the conditions of sale or a copy of the contract. Counsel's opinion in this case will enable the solicitor to prepare the requisitions on the title; and here it will be perceived how necessary it is to carefully compare the abstract with the deeds, otherwise counsel will probably raise a multitude of trifling questions as to whether a particular date or description be correctly given, or as to the execution of a will or deed, or as to the correctness of a recital, and can only be satisfied on this head by a fresh reference to the deeds, thus incurring additional labour and expense, as well as an obligation to the vendor's solicitor for a second production of the deeds.

If the young solicitor takes upon himself the responsibility of perusing the abstract and preparing the requisitions, he may obtain valuable help by referring to the standard works on conveyancing and also to the handy

little volumes which have been published for the purpose of assisting him.[1]

The writer has found it a convenient plan, when perusing an abstract, to take a sheet of paper with a double margin and first to insert the date of the deed, with a reference to the page where it is abstracted, in the left-hand margin, then in the middle to put a concise analysis of such part of the deed as is necessary to show the devolution of the title and any special clauses or stipulations, leaving the right-hand margin for notes and queries. It may sometimes be convenient to keep the devolution of the legal and equitable estates separate; but this will depend on the title. It is, however, always the best course in perusing an abstract to show the devolution of the title to any attendant term of years on a separate sheet of paper. All this may be done very briefly, taking care to make a note in the margin opposite any particular clause or matter which gives rise to any doubt or question, in order that attention may be readily called to it afterwards. Very often a subsequent deed may have the effect of disposing of the point thus raised and noted; and should this be so, it is a good plan to draw the pen through the query and write under it a reference to the subsequent page of the abstract where it is cleared up. In this way it will be found that when the entire abstract has been read many of the queries are disposed of, and those which remain will form the material for requisitions on the title. Of course, although only the principal parts of the deed are inserted in the analysis, the whole of the deed as abstracted must be carefully read; and in each case the conveyancer must satisfy himself that the deeds are nothing more—and nothing less—than what he states them to be in his analysis.

[1] Gover's Hints as to advising on Title; Emmett's Notes on perusing Titles; Boughton's Reminders for Conveyancers.

On the opposite page is a specimen analysis of part of a title, comprising two conveyances, a will, a mortgage, and a reconveyance, with the various queries raised on a perusal of them. It will be seen that the first query is as to the identity of the property described in the abstract with that in the contract. The second is as to whether any widow of T. J. Richardson became entitled to dower. But as, under his will, on p. 3 of the abstract, his widow takes all his property, the question of dower is set at rest, and therefore the pen is drawn through the query, and "p. 3" (the reference to the page where the will is abstracted) placed under it.

The query as to whether the will has been registered in the Middlesex registry is treated in the same way, because it appears that the mortgage by Jane Richardson to Jackson and Thornton was duly registered; and by § 8 of the Vendor and Purchaser Act, 1874,[1] this renders the non-registration of the will immaterial.

The query as to whether the mortgage has been paid off is answered by the reconveyance of the 28th of October, 1875, at page 9 of the abstract.

There would have been a query as to succession duty on the death of Richardson, had the devise been to anyone but his wife; but no succession duty is paid by a wife succeeding her husband or by a husband succeeding his wife.

This analysis contains only very simple documents. In many cases the analysis of a complicated deed must be much fuller than these examples. It is specially necessary to note any recited links in the title which have not been abstracted in chief, and any restrictive covenants or other unusual provisions.

[1] 37 & 38 Vict. c. 78; Greenwood's Recent R. P. Statutes, 2nd ed. p. 204.

Dates.	*Analysis of Deeds, &c.*	*Notes and Queries.*
1852. May 15. (1)	John Williamson ..... 1 Thomas James Richardson ..... 2 Conson. £1,000 Convce. by 1 to 2 of— Piece of land at Southgate, Mx. 5A. 2R. 25P. called Fallow Field. To use of 2 in fee simple Covts. by 1 for title e. a. r. i. Regd.	qy. Identity ~~qy. Dower~~ p. 3.
1856. Oct. 17. (3)	Will of Thomas James Richardson, g. d. & b. All real and personal estate To widow Jane Richardson (sole exix.) e. a.	Produce probate ~~qy. regd.~~ p. 8.
1860. Jan. 14. 1860. Mch. 26. (3)	Death and Probate of Will of T. J. Richardson.	qy. certificate
1861. June 5. (4)	Jane Richardson ..... 1 William Jackson James Thornton ..... 2 Mtge. by 1 to 2 of— Same piece of land. In fee simple E. R. £750. e. a. r. i. Regd.	~~qy. Parcels~~ p. 9.
1875. Oct. 28. (9)	William Jackson James Thornton ..... 1 Jane Richardson ..... 2 Conson. £750 and interest. Reconveyance of— Same piece of land. To use of 2 in fee simple e. a. r. i.	qy. regd.
1878. April 6. (11)	Jane Richardson ..... 1 William John Phillips ..... 2 Conson. £1,500. Convce. by 1 to 2 of— Same piece of land. To use of 2 in fee simple e. a.	qy. r. i. qy. regd.

The letters e. a. r. i. mean "executed, attested, and receipt indorsed"; while, of course, "regd." means "registered"; and the letters E. R. in the analysis of the mortgage of the 5th of June, 1861, stand for "Equity of Redemption."

The usual and most convenient mode of copying requisitions on title is on abstract or brief paper,

doubling it in half margin, writing the queries on the left side and reserving the right side for the replies, thus:—

Requisitions on the Title to a House and Grounds, known as Fallow Hall, Southgate, in the County of Middlesex:—

1. Evidence must be given of the identity of the piece of land described in the abstract with the property purchased. (Ab. p. 2.)

2. Probate of the will of T. J. Richardson must be produced. (Ab. p. 3.)

3. Have the vendors a certificate of his death? If not, where was he buried?

And so on until all the requisitions are exhausted.

Requisitions should always give the page of the abstract to which they refer; and if they relate to any particular document, the date of it should be accurately given. The disregard of these simple rules gives rise to much annoyance and unnecessary labour.

Requisitions and Replies.—Having obtained the vendor's replies to the requisitions on the title, it will be necessary to consider whether or not they are satisfactory. This is a duty of equal importance to the perusal of the abstract, and sometimes there may be greater difficulty in deciding whether or not an answer is sufficient, than in raising the question. If there is any doubt as to the course to be pursued, it is advisable, whether the abstract was or was not in the first place laid before counsel, to place all the papers before him and take his opinion. If, however, there is no serious doubt, then the next step will be either to send further requisitions to the vendor's solicitor, or to prepare the draft conveyance.

By raising only such questions as are of real importance, much expense will be saved to the purchaser and much labour to his solicitor. In some cases—especially where the contract contains a clause enabling the vendor to rescind if a requisition is insisted upon—the solicitor may find it necessary to consult his client whether he will press for a more satisfactory answer to a particular requisition (after the vendor's solicitor has declared his inability, or declined, to give further information), or whether he will waive it and complete the purchase.

In other cases the contract or conditions may be so framed as to preclude the purchaser from requiring further information, and he may be compelled to complete, although a particular requisition may not be satisfactorily replied to. Considerable tact is required in deciding how far requisitions should be pressed in cases where the vendor has a right of rescission.[1]

It may be convenient here to allude to the clause formerly inserted, and now implied by statute,[2] in conditions and contracts for sale of leasehold property to the effect that the last receipt for rent shall be conclusive evidence of all the covenants in the lease having been performed up to the completion of the purchase. This condition might formerly have the effect of compelling a purchaser to take a title worth nothing, owing to a prior continuing breach of covenant, not relievable in equity, having been committed by the vendor.[3] But now, the Court may grant relief in all cases of breach of covenant, except that against alienation, and except (in the case of a mining lease) a covenant or condition allowing the lessor to have access to or inspect books,

[1] *Re Starr-Bowkett Building Society and Siburn*, 42 Ch. D. 375; *Ashburner* v. *Sewell*, (1891) 3 Ch. 405; *Smith* v. *Wallace*, (1895) 1 Ch. 385.

[2] 44 & 45 Vict. c. 41, s. 3 (4); R. P. Statutes, 190.

[3] *Lawrie* v. *Lees*, 14 Ch. D. 249.

accounts, records, weighing machines, &c., or to enter and inspect the mine or workings.[1]

The vendor is bound, if asked, to state whether he is aware of the existence of any continuing breach. Before the passing of the Conveyancing Act, 1881, the only breaches in respect of which relief could be granted were breaches of covenant for non-payment of rent under § 2 of the Common Law Procedure Act, 1860,[2] which is still in operation, and for insurance under §§ 4—9 of Lord St. Leonards' Act, 1859.[3] The last-mentioned sections are now repealed; and any proceedings for relief against forfeiture for breach of covenant to insure must now be taken under § 14 of the Conveyancing Act, 1881. Where a breach has been committed, and such breach must have been known to the vendor at the time of sale, it will be the safer plan, notwithstanding the conditions, to insist on his obtaining a waiver from the lessor. This is an easy matter, as under § 1 of Lord St. Leonards' Act, 1859,[4] a lessor may waive such a breach without prejudice to his right to take advantage of a future breach.

The vendor of leaseholds should always be asked whether he has been served with a notice under § 14 (1) of the Conveyancing Act, 1881, and if he has, and the lessor refuses to grant a waiver, the better plan will be to rescind the contract.

In case relief has been granted against any previous breach of covenant, the purchaser should ascertain whether or not an injunction to restrain a repetition of such breach has been granted.

It must be remembered that in case succession or estate duty is payable, the vendor's solicitor must either produce the receipt or procure a certificate from Somerset

[1] 44 & 45 Vict. c. 41, § 14; 55 & 56 Vict. c. 13; R. P. Statutes, 237.
[2] 23 & 24 Vict. c. 126. [3] 22 & 23 Vict. c. 35. [4] *Ibid.* § 1.

House, certifying that all duty has been paid, unless the duty became payable at such a date as to enable the purchaser to rely upon § 12 of the Customs and Inland Revenue Act, 1889,[1] or unless, in the case of estate duty, he has no notice of the liability to duty.[2]

When the vendor is a tenant for life selling under the Settled Land Act, 1882,[3] the succession duty becomes a charge on the purchase-money and ceases to affect the land in the hands of the purchaser. This is also the case on a sale under the Settled Estates Act, 1877.[4]

SEARCHES.—Search must be made or a certificate of search obtained under § 2 of the Conveyancing Act, 1882, and the Land Charges Registration and Searches Act, 1888, at the Central Office of the Royal Courts of Justice. The search should include judgments, writs of execution, orders appointing receivers by way of equitable execution, Crown debts, *lites pendentes*, and annuities, and should be made in the names of the vendor, and all other persons having any present interest in the property dealt with (except mortgagees who have been, or are about to be, paid off).[5] § 2 of the Conveyancing Act, 1882, does not apply to deeds inrolled under any statute or statutory rule. Such deeds must still be searched for by the purchaser's solicitor.

In some cases it may be desirable to search for or inquire as to the existence of charges under the Housing of the Working Classes Act, 1890,[6] the Small Holdings Act, 1892,[7] the Public Health Act, 1875,[8] or the Private

[1] 51 & 52 Vict. c. 7.
[2] 57 & 58 Vict. c. 30, § 8 (18) and § 9.
[3] 45 & 46 Vict. c. 38; R. P. Statutes, 335—343.
[4] *Re Warner*, 17 Ch. D. 711.
[5] 17 & 18 Vict. c. 15, § 11; *Greaves* v. *Wilson*, 25 B. 434.
[6] 53 & 54 Vict. c. 70, § 37.
[7] 55 & 56 Vict. c. 31, §§ 6, 8, and 17.
[8] 38 & 39 Vict. c. 55, § 257; but see *Re Bettesworth and Richer*, 37 Ch. D. 535.

Streets Works Act, 1892.[1] It should be ascertained that no water rates are owing in respect of the property.[2] In some cases a search for bankruptcies is desirable.

The search for judgments should be made for five years prior to the day of completion,[3] but judgments entered since the 23rd of July, 1868, may be disregarded unless a writ of execution or an order appointing a receiver by way of equitable execution has been registered.[4] Should the property be in Middlesex or Yorkshire, the register for the county in which the property is situate must also be searched, in order to discover if any deeds affecting the property have been executed which do not appear on the abstract. But this need not be done in cases where the land is registered under the Land Transfer Act, 1875. These searches should be made as near the completion of the matter as possible; but where the searches are likely to take up much time they may be made at an earlier stage of the business, and another search made from the foot of the prior search immediately before attending to complete. If a charge or incumbrance of any description not disclosed by the abstract should be discovered, a letter should be written apprising the vendor's solicitor of the fact, and requiring its removal before the completion.

Preparation of Conveyance.—If a solicitor has any doubt as to the proper persons to make parties to the conveyance, which is very likely to be the case when dealing with large properties, or estates that have been frequently dealt with, the more prudent course will be to hand all the papers to counsel and instruct him to settle the draft conveyance.

[1] 55 & 56 Vict. c. 57, § 13.
[2] *East London, &c. Co.* v. *Kellerman*, (1892) 2 Q. B. 72.
[3] 2 & 3 Vict. c. 11, § 4.
[4] See 23 & 24 Vict. c. 38, §§ 1, 2; 27 & 28 Vict. c. 112, § 1.

Although the greatest accuracy should be observed in the description of the parties to a deed, a misnomer will not be fatal if the party can be identified.[1]

Where the vendor is seised in fee simple, it is usually necessary to make him only the party of the one part, and the purchaser of the other part. In the rare cases where such a vendor was married before 1834 to a woman still living, she should also be a party. It is not necessary to make the dower trustee in the conveyance to the vendor a party to the draft if the property was conveyed to the vendor and a trustee to the ordinary uses to bar dower, for in such a case the power of appointment reserved under that form of conveyance is alone sufficient to pass the estate, and the granting part which follows is subsidiary to the appointment. If the purchaser was married before 1834, and his wife is still living, it may be desirable to insert the name of a third person as a trustee, and to convey the property to the ordinary uses to bar dower. If the estate be mortgaged, then the mortgagee must join; and if any other persons appear by the abstract to have an interest in the property, then those persons must join in the conveyance.[2]

If the legal estate has been vested in a sole trustee or mortgagee who is dead, and the legal estate has not been got in, the question will arise whether his heir or devisee must concur, or whether his executors or administrator can convey under either § 4 of the Vendor and Purchaser Act, 1874,[3] § 48 of the Land Transfer Act, 1875,[4] or § 30 of the Conveyancing Act, 1881.[5]

In some rare cases a person entitled to an equitable

[1] *James* v. *Whitbread*, 11 C. B. 406.

[2] But where there is a trust for, or power of, sale the persons beneficially interested are not necessary parties. See p. 67, *post*.

[3] 37 & 38 Vict. c. 78; R. P. Statutes, 199.

[4] 38 & 39 Vict. c. 87; R. P. Statutes, 200.

[5] 44 & 45 Vict. c. 41; R. P. Statutes, 201.

estate can convey an outstanding legal estate[1] even without a power of attorney.[2]

A limited owner selling under the Settled Land Act, 1882,[3] may under § 20 convey the property free from all limitations and provisions of the settlement; but such conveyance will be subject to all estates and charges having priority to the settlement, to all estates conveyed for securing money actually raised under any power in the settlement at the date of the conveyance, and to all valid leases and other grants previously made for value. If the purchase-money is not paid into Court, the trustees of the settlement, as defined by § 2 (8) of the Act, should be made a party in order to give a valid discharge for the purchase-money under §§ 21 and 40.

Limited owners may also convey to railway companies and certain other corporations and public bodies under § 7 of the Lands Clauses Consolidation Act, 1845, the purchase-money being paid to trustees if less than 200*l.*, and into Court if exceeding that sum.

It sometimes happens that a person entitled to a rent-charge, or a judgment creditor, is induced to give up his charge upon part of an estate contracted to be sold, and in this case he must be made a party to the conveyance, and the particulars of the charge or judgment and his consent to release the estate therefrom should be recited. Before 1859 the judgment creditor would merely have covenanted not to resort to the estate conveyed for satisfaction of his judgment debt, because a release of part of the hereditaments affected by the judgment was at law a release of the whole, and in equity such a covenant was considered an effectual release; but now he will join in the granting part of the deed, as under §§ 10 and 11

[1] 55 & 56 Vict. c. 29, § 6 (2).

[2] And see p. 68, *post*.

[3] 45 & 46 Vict. c. 38; R. P. Statutes, 490.

of Lord St. Leonards' Act, 1859,[1] the release from a rent-charge or judgment of part of the hereditaments charged therewith does not affect the validity of the charge or judgment as to any other property not specifically released.

Where devisees in trust for sale, with power to give receipts for purchase-money, are the vendors, the persons beneficially entitled will, as a rule, not be necessary parties to the conveyance, inasmuch as the trustees can make a title without them, unless the consent of the tenant for life or some other person is required by the terms of the settlement. The powers of trustees for sale were considerably curtailed by §§ 56 and 63 of the Settled Land Act, 1882,[2] but the difficulty created by those sections was, to some extent, removed by §§ 6 and 7 of the Settled Land Act, 1884.[3]

Even where the instrument containing the trust for sale does not contain an express power to give receipts, that power is supplied by § 36 of the Conveyancing Act, 1881,[4] which applies to trusts created as well before as after the commencement of that Act. The power previously relied on for this purpose was conferred by § 29 of Lord Cranworth's Act,[5] which applied only to cases where trustees had been appointed by deed, will, or codicil dated between the 28th of August, 1860,[6] and the 31st of December, 1881. This section is now repealed by § 71 of the Conveyancing Act, 1881. A similar power is given to mortgagees and other vendors acting under deeds dated since the 13th of August, 1859, by § 23 of Lord St. Leonards' Act,[7] which is still unrepealed.

[1] 22 & 23 Vict. c. 35; R. P. Statutes, 162.
[2] 45 & 46 Vict. c. 38.
[3] 47 & 48 Vict. c. 18; R. P. Statutes, 522—533.
[4] 44 & 45 Vict. c. 41; R. P. Statutes, 287.
[5] 23 & 24 Vict. c. 145.
[6] See 23 & 24 Vict. c. 145, § 34.
[7] 22 & 23 Vict. c. 35.

And under mortgages by deed executed between the 28th of August, 1860, and the 31st of December, 1881, the mortgagees may, in the absence of a declaration to the contrary, sell and give receipts under §§ 11 and 12 of Lord Cranworth's Act. As to every mortgage *by deed* executed after the 31st of December, 1881, §§ 19 to 22 of the Conveyancing Act, 1881,[1] confer ample powers of selling and giving receipts upon the mortgagee, unless a contrary intention is expressed in the deed. It must be remembered that these powers are conferred only where the mortgage is *by deed*. Therefore an equitable mortgagee under a mere memorandum of deposit cannot exercise these powers. And even where a mortgage by way of underlease of leaseholds is by deed, § 21 of the Conveyancing Act, 1881, does not, like § 15 of Lord Cranworth's Act,[2] enable the mortgagee, upon a sale under the statutory power, to convey the nominal reversion left in the mortgagor. Nor does it enable an equitable mortgagee to convey the legal estate.[3]

§ 13 of the Trustee Act, 1893[4] (which has now superseded the repealed § 35 of the Conveyancing Act, 1881[5]), also confers upon trustees for sale under instruments dated after the 31st of December, 1881, certain powers which were usually expressly given to them by well drawn wills and settlements.[6]

§ 4 of the Conveyancing Act, 1881, provides in effect that in certain cases the legal personal representatives (*i. e.*, the executors or administrators) of a person who has died after entering into a contract for sale and before completion, shall have power to convey the land: but it

[1] 44 & 45 Vict. c. 41.
[2] *Hiatt* v. *Hillman*, 19 W. R. 694.
[3] *Re Hodson and Howe*, 35 Ch. D. 668.
[4] 56 & 57 Vict. c. 53.
[5] 44 & 45 Vict. c. 41.
[6] R. P. Statutes, 281.

will still be safer to make the heir or devisee a party, where practicable, so as to avoid any question whether the contract was valid and binding on the heir or devisee.

§ 50 of the same Act renders it unnecessary to insert the name of a third party as grantee to uses where a person conveys land of which he is seised to the use of himself and another—for instance, when a sole surviving trustee transfers a mortgage secured on real estate to himself and the new trustee. Previously it was necessary in such a case to convey either to the new trustee or to some third person to the use of the old and new trustees. In future the estate may be conveyed directly to the use of the two trustees.

It may happen that the vendor is a married woman, and as the law respecting a married woman entitled to real estate is somewhat complicated, it will be well to state it at some length.

1. A woman married after the 1st of January, 1883, is entitled for her separate use to, and may convey as if she were a *feme sole*, all real and personal property belonging to her at the time of her marriage; and every married woman is entitled for her separate use to, and may convey as if she were a *feme sole*, all real and personal property to which her title may accrue after the 1st of January, 1883, whether married before or after that date. See and compare §§ 1, 2 and 5, of the Married Women's Property Act, 1882.[1] She can therefore pass the legal estate in such real estate without the concurrence of any other person, and without a deed acknowledged. Care must, of course, be taken to see that separate property of a married woman is not bound by any covenant in her marriage settlement (or other-

[1] 45 & 46 Vict. c. 75; R. P. Statutes, 354, 359, 360.

wise for valuable consideration) to settle after-acquired property.[1]

2. A married woman can dispose of an equitable fee simple, estate tail, and (unless restrained from anticipation) estate for life settled on or belonging to her for her separate use, or as her separate property, without a deed acknowledged.[2] But in order to pass the legal estate, in cases not within Clause 1, her trustee (if any) must concur. If there is no trustee her husband must concur, as in that case the legal estate is vested in the husband and wife jointly; and even although, after conveyance by the wife of her equitable interest, she and her husband would be trustees of the legal estate for the purchaser, she could not convey it alone under § 6 of the Vendor and Purchaser Act, 1874.[3]

3. No woman married before the 1st of January, 1883, can convey real estate not belonging to her for her separate use (except by appointment in execution of a power vested in her), unless her husband concurs or his concurrence is dispensed with by the Court. The formalities prescribed by the Fines and Recoveries Act,[4] as amended by § 7 of the Conveyancing Act, 1882,[5] must be complied with.

4. Any married woman may dispose of her absolute vested interest in personal estate without a deed acknowledged,[6] but the concurrence of her husband should be obtained in any conveyance of personal estate not belonging to her for her separate use.

5. A married woman, even with the consent of her

[1] *Hancock* v. *Hancock*, 38 Ch. D. 78.

[2] *Taylor* v. *Meads*, 5 N. R. 348; 4 D. J. & S. 597; *Pride* v. *Bubb*, L. R. 7 Ch. 64; *Cooper* v. *Macdonald*, 7 Ch. D. 288.

[3] 37 & 38 Vict. c. 78; R. P. Statutes, 202.

[4] 3 & 4 Wm. 4, c. 74.

[5] 45 & 46 Vict. c. 39; R. P. Statutes, 371 *et seq.*

[6] *Lechmere* v. *Brotheridge*, 32 L. J. Ch. 577.

husband, cannot make an assignment of her reversionary interest in personal estate (other than that within clause 1) that will be binding on her in the event of her surviving her husband, unless her interest accrued under an instrument dated after the 31st of December, 1857;[1] and in such a case the assignment must be acknowledged pursuant to the Fines and Recoveries Act,[2] as amended by § 7 of the Conveyancing Act, 1882.[3]

6. A married woman cannot (during coverture) dispose of property, whether real or personal, settled on her for her separate use without power of anticipation, except with the sanction of the High Court of Justice under § 39 of the Conveyancing Act, 1881.[4]

7. A married woman who is a bare trustee can convey the trust estate as if she were unmarried.[5] But it has now been decided, contrary to the views held by a considerable number of conveyancers, that a married woman who has accepted the office of trustee since the 1st of January, 1883, and has active duties to perform, cannot convey the legal estate in property of which she is trustee without the concurrence of her husband.[6] In such a case, and also in cases where such an office has been accepted by a married woman before that date, her husband must concur, and the conveyance must be acknowledged.

8. A married woman, whether infant or of full age, can, under § 40 of the Conveyancing Act, 1881,[7] give to any person a valid power of attorney to execute a deed in her name or on her behalf.

[1] 20 & 21 Vict. c. 57. [2] 3 & 4 Wm. 4, c. 74. [3] 45 & 46 Vict. c. 39.

[4] 44 & 45 Vict. c. 41; *Hodges* v. *Hodges*, 20 Ch. D. 749; *Re Tippett and Newbould*, 37 Ch. D. 444; *Re Harrison*, 36 Ch. D. 701; 40 Ch. D. 418; *Re Milner*, (1891) 1 Ch. 547; *Re Ayres*, 8 P. D. 168.

[5] *Re Docwra*, 29 Ch. D. 693.

[6] *Re Harkness and Allsopp*, (1896) 2 Ch. 358.

[7] 44 & 45 Vict. c. 41; R. P. Statutes, 291.

9. A married woman who is tenant for life or tenant in tail, can, by virtue of § 61 of the Settled Land Act, 1882,[1] exercise all or any of the powers conferred by that Act on tenants for life, without the concurrence of her husband, if entitled for her separate use, and with his concurrence if not so entitled. No restraint on alienation or anticipation can prevent the exercise by her of any such powers.

In preparing the recitals, the draftsman must be guided by the state of the title as appearing on the abstract; for instance, if the last document in the abstract be a conveyance to the vendor in fee simple, he may either dispense with any recital, or state shortly, in the usual form, that the vendor is seised in fee simple of the hereditaments intended to be conveyed. Having regard to sub-sect. 2 of § 2 of the Vendor and Purchaser Act, 1874,[2] the latter course is now often adopted. Although it would not be wise to rely too thoroughly upon the decision in *Bolton* v. *London School Board*,[3] a recital of seisin will be useful, because it will eventually—even if not at the expiration of twenty years—form an excellent root of title. The recital should be that the vendor is seised "in fee simple"—not merely "in fee." Practitioners are apt to forget that the word "fee" is applicable to such estates as a base fee and fee tail. In such a case there is no necessity, nor can it answer any useful purpose, to recite any of the prior deeds. But if the last deed on the abstract be a conveyance to the vendor, to uses to bar dower (which is now seldom the case), such deed should be recited, because the conveyance will be an appointment in exercise of the power reserved to the vendor by that deed.

In some cases transactions which have a bearing upon

[1] 45 & 46 Vict. c. 38; R. P. Statutes, 529.
[2] 37 & 38 Vict. c. 78.
[3] 7 Ch. D. 766.

the conveyance are already recited in a previous deed; and, if the conveyance can be indorsed upon such previous deed, it is unnecessary to repeat the recitals, as they can easily be referred to if necessary. Hitherto, where from want of space or any other reason it has been impracticable to indorse the conveyance upon the previous deed, the only alternative was to repeat the recitals. But now § 53 of the Conveyancing Act, 1881,[1] provides in effect that a deed expressed to be supplemental to a previous deed shall be read as if indorsed thereon. There are some cases where this provision will prove useful; but it should be acted upon with caution. An indorsed deed, of course, cannot be separated from the one upon which it is indorsed, and therefore, in reading the one, the recitals in the other can always be referred to; but in the event of a previous deed being lost, or otherwise separated from a deed expressed to be supplemental to it, the supplemental deed may, in some cases, be rendered unintelligible.

Having regard to the Conveyancing Act, 1881,[2] the draftsman may make his conveyance much more concise than formerly. The word "grant" need not be used,[3] and if the vendor is expressed to convey "as beneficial owner" (where the conveyance is for valuable consideration), "as trustee," "as mortgagee," "as personal representative" of a deceased person, "as committee of a lunatic," or "as settlor," the usual covenants for title or against incumbrances, as the case may be, need not be inserted.[4] Even where covenants are inserted, §§ 58, 59, and 60 will enable the draftsman to curtail them.

Where a tenant for life conveys under the Settled

[1] 44 & 45 Vict. c. 41; R. P. Statutes, 309.
[2] 44 & 45 Vict. c. 41.
[3] § 49; R. P. Statutes, 305.
[4] § 7; R. P. Statutes, 220.

Land Acts "as beneficial owner," it is usual to insert a proviso limiting the covenants so implied to the vendor's life estate.

The long string of general words in which ancient conveyancers rejoiced, may be safely omitted; but as § 6 only applies to easements, &c., existing at the time of the conveyance, some words referring to easements formerly enjoyed should be inserted where it is desired to revive the right to former easements which have been extinguished by common ownership or otherwise. The words known as "all the estate" clause may also be omitted;[1] and the land may be conveyed to the purchaser "in fee simple" or "in tail," instead of to him and "his heirs and assigns" or "the heirs of his body."[2] But these changes should not be made without consideration. In conveyances to a corporation aggregate the words "in fee simple" may be appropriately used instead of the expression "their successors and assigns," which is often used quite inaccurately. A conveyance to an incorporated company should be either to the company "in fee simple" or to the company "and its assigns." It can have no "successors" other than "assigns." But in a conveyance to an individual a limitation to him "in fee simple" has no advantage, even in brevity, over the well-known limitation to him "and his heirs."

In cases where the vendor retains any of the title deeds (as he is entitled to do if he retains any part of the estate to which they relate), an acknowledgment and undertaking under § 9 may be used instead of the hitherto usual covenants for production and safe custody. Where trustees or mortgagees are conveying parties and retain deeds, they give an acknowledgment, but not an undertaking for safe custody. If the usual acknowledgment of receipt of the purchase-money is inserted in the body

[1] § 63; R. P. Statutes, 314.

[2] § 51; R. P. Statutes, 307.

of the deed (*i.e.*, in the *testatum*) no indorsed receipt is necessary.[1]

Approval of Draft.—The draft having been carefully settled, a fair copy of it should be made and forwarded to the vendor's solicitor for approval, and after he has approved of it on behalf of his own clients, he will forward it for approval to the solicitors of any other parties for whom he may not be professionally concerned, and return it to the purchaser's solicitor when it has been approved of on their behalf. On receiving back the draft the latter will go carefully through it, in order to see what alterations have been made therein; and if any important alteration has been made, he will consider how it affects the draft, and how far he is obliged to submit to it. In such a case, if the draft has been settled by counsel, it should be laid before him to re-settle, as the framer of the draft is the most competent person to advise on the effect of any alterations therein. As to how far the vendor's solicitor is justified in insisting on alterations he may have made in the frame of the draft, or in any objection he may make to the mode in which the purchaser thinks fit to have the property conveyed, the authorities should be consulted.[2]

In cases where trustees or mortgagees are parties to the deed, great pertinacity is sometimes evinced by their solicitors insisting on qualifying words being inserted in the operative part of the deed, such as the following:—"As far as they lawfully can or may, but not further or otherwise, and without warranty of title." Now these words at the present day have no meaning at all, as trustees cannot convey more than they are authorized to do by the power which they exercise, and as they never

[1] § 54; R. P. Statutes, 309.

[2] *Clarke* v. *May*, 16 Beav. 273; *Cooper* v. *Cartwright*, Joh. 685; *Earl Egmont* v. *Smith*, 6 Ch. D. 469.

give any express or implied covenant more extensive than that they have not done any act to incumber, those qualifying words are unnecessary and improper.[1] And with respect to the word "grant" creating a warranty, an eminent conveyancer, more than half a century ago, stated his opinion that it would not have that operation, and it was enacted more than fifty years ago[2] that the word "grant" should not imply any covenant. The only case in which it has that effect is in a conveyance by a company or public authority under § 132 of the Lands Clauses Consolidation Act, 1845.[3] Moreover, the word "grant" need not now be used at all in ordinary conveyances — the word "convey" is quite enough. When, however, a solicitor acting for a trustee or mortgagee is disposed to insist on qualifying words being inserted, the better plan is to let them remain, as they are quite harmless, and the point is not worth a long discussion; but it is a pity that men of narrow understandings should have it in their power to incumber well-drawn drafts by useless and unmeaning words.

In case the original draftsman should modify or strike out any of the alterations that have been made in the draft as originally settled by him, it should be again forwarded to the vendor's solicitor, as it is not regular to alter a draft after it has been approved of by him without submitting the alterations for his approval.

Engrossment of Conveyance.—After the draft conveyance has been finally approved of, it will be engrossed by the purchaser's solicitor, and the draft and engrossment sent to the vendor's solicitor for examination, and he will also get it examined by any other solicitor concerned in the matter. On sending the draft to the

[1] *Calvert* v. *Sebright*, 16 Beav. 156.
[2] 8 Vict. c. 106, § 4.
[3] 8 & 9 Vict. c. 18.

stationer for engrossment, it is better to mark on it the particulars of the stamps on which it is to be engrossed, in order to avoid the possibility, if the deed be engrossed on unstamped parchment, of its being put away and forgotten to be stamped until too late. A stationer should never be told to engross the deed "on proper stamps," as it is unfair to him, and may cause the solicitor instructing him some annoyance and expense if he or his clerk forgets, on receiving the engrossment, to examine the correctness of the stamps; and as he must, or at all events ought to, examine them, it is as easy to do this before the draft is sent for engrossment as after. A law stationer is not expected to be in a position to know what stamps should be affixed to any but the most simple documents. In case of any doubt as to the correct stamp, an adjudication can be easily obtained without expense on application at Somerset House. But in most cases a solicitor can, himself, ascertain the proper stamps by referring to the Stamp Act, 1891.[1]

Completion.—On forwarding the draft and engrossment to the vendor's solicitor an appointment may usually be made for the completion of the business. This appointment will be made with the vendor's solicitor (unless some other office is fixed by the contract or conditions of sale), and he will arrange as to the place of completion, and inform the purchaser's solicitor accordingly.

In some cases where a married woman is a party to the deed it must be acknowledged by her, pursuant to the Fines and Recoveries Act as amended by the Conveyancing Act, 1882;[2] but the course necessary to be followed on such occasions will appear in a subsequent part of this book;[3] and if the property be in Middlesex

[1] 54 & 55 Vict. c. 39. [2] 3 & 4 Wm. 4, c. 74.
[3] See Chap. IX. p. 174, *post*.

or Yorkshire, a memorial of the deed will have to be registered. A memorial can be executed either by grantor or grantee, but care must be taken that one of the witnesses to its execution is also a witness to the execution of the conveyance by the same party.

At the time and place appointed for completion, the purchaser's solicitor will attend with his client and pay the money and take the deeds. If the deed is executed by the vendor and contains (as it should do) an acknowledgment by him of due receipt of the purchase-money, or an indorsed receipt signed by him, the purchase-money may safely be paid to his solicitor.[1] The purchaser cannot compel the vendor to attend and execute the deed in his presence, but he is entitled to have the vendor's execution attested by any person whom he may appoint, and such person may, if he pleases, be his solicitor.[2]

If the property is leasehold the purchaser's solicitor will, on completion, require the policy of insurance and last receipt for premium to be handed over, and the last receipt for rent should be inspected by him. He should also satisfy himself as to the rates and taxes having been paid up to the day of completion, and they should be apportioned, if necessary, but it is usual in practice to accept the undertaking of the vendor's solicitor to clear up all rates and taxes to that day. If any interest is payable by the purchaser, it should be calculated and income tax be deducted.[3] In case the property consists of a house or other building in hand, the keys should be handed over on completion, unless possession has previously been given to the purchaser.

[1] 44 & 45 Vict. c. 41, § 56; *Day* v. *Woolwich Equitable Building Society*, 40 Ch. D. 491; 51 & 52 Vict. c. 59, § 2.

[2] 44 & 45 Vict. c. 41, § 8.

[3] *Bebb* v. *Bunny*, 1 K. & J. 216.

CHAPTER IV.

MORTGAGES.

A MORTGAGE—whether legal or equitable—is a security given by one person to another to secure the repayment of a sum of money, and almost every description of property and any interest therein may be the subject of a mortgage.

ACTING FOR MORTGAGOR.—With regard to mortgages of land, the observations in Chapter II. as to the duties of a vendor's solicitor, in relation to the abstract and completion of the matter, will apply to the duties of a solicitor acting for a mortgagor.

And where a client is not absolute owner of the property (or the interest therein upon which he proposes to create a security), the question will arise whether he has power to give a valid mortgage.

Upon this point it should be remembered that under §§ 14 to 18 of Lord St. Leonards' Act, 1859,[1] trustees and executors respectively may, under certain circumstances, raise money by mortgage of their testator's estate for the purpose of paying debts, legacies, or other specific moneys, charged by his will upon his real estate, although the will may not contain any express power to mortgage. § 16 applies to cases where the testator has not devised the estate in the manner pointed out in § 14.

Under § 18 of the Settled Land Act, 1882,[2] any person

[1] 22 & 23 Vict. c. 35; R. P. Statutes, 164 *et seq.*
[2] 45 & 46 Vict. c. 38; R. P. Statutes, 488.

who comes within the definition of a tenant for life in § 2, or who, under §§ 58, 59, or 60 has the powers of a tenant for life, may raise money required for enfranchisement or for equality of exchange, or partition on mortgage of settled land; and under § 11 of the Settled Land Act, 1890,[1] he may, in like manner, raise money required to discharge an incumbrance on the settled land, and for the costs of the transaction. The money so raised is capital money arising under the Act, and may therefore be paid to trustees with a power of sale, or to trustees appointed under § 38. If there are no such trustees, it must be paid into Court, under § 21.

Before the 1st of January, 1883, money could be raised by mortgages of settled estates for similar purposes under § 9 of Lord Cranworth's Act,[2] which is repealed by § 64 of the Settled Land Act, 1882.

A mortgage of settled land to raise costs, charges, and expenses, may be authorised by the Court under § 47 of the last-mentioned Act.[3]

Attention may also be drawn to the provisions of §§ 49 to 53 of the Improvement of Land Act, 1864,[4] under which charges to raise money for improvements specified in § 9 of the same Act may be created.

By § 30 of the Settled Land Act, 1882, the enumeration of improvements in § 9 of the Improvement of Land Act, 1864, is extended so as to include all improvements specified in § 25 of the Settled Land Act.

Charges for specified purposes may also be created under the Limited Owners' Residences Acts, 1870 and 1871,[5] and under the Limited Owners' Reservoirs and Water Supply Further Facilities Act.[6]

[1] 52 & 53 Vict. c. 69.
[2] 23 & 24 Vict. c. 145.
[3] R. P. Statutes, 516.
[4] 27 & 28 Vict. c. 114; R. P. Statutes, 582—585.
[5] 33 & 34 Vict. c. 56; 34 & 35 Vict. c. 84; R. P. Statutes, 611—615.
[6] 40 & 41 Vict. c. 31; R. P. Statutes, 616 *et seq.*

ACTING FOR MORTGAGEE.—On the other hand, if the client is the mortgagee, the course of proceeding on his solicitor's part will be similar to that on a purchase, with this important difference, that a mortgagee is never subject to any restrictions as to title or evidence of title, or the time when the matter is to be completed; there is also this further difference, that specific performance cannot be enforced against him. In many cases a willing purchaser will waive points on the title through a wish to complete a purchase when the identity of the property he has agreed to buy is clearly established. He may require a few extra acres to make his lands lie in a ring fence, or he may want a particular house either for occupation or for removal in order to improve a view. In the case of a mortgage none of these considerations arise: a mortgagee lends his money on a particular security and expects to have it back again; and, therefore, if there is any doubt as to the title, or as to obtaining the evidence necessary to establish it, so as to enable him, in the event of a subsequent sale (either under his power or after foreclosure), to force the title upon a purchaser, he should not be advised to advance his money until such doubts are removed. If, however, such doubts resolve themselves merely into a question of expense hereafter, in case a sale should have to be resorted to by the mortgagee, the question for consideration will be how far the value of the property will be sufficient to pay for this extra expense; for if the mortgagee gets a marketable title, and is amply covered by the value of the property mortgaged, he will be safe in making the advance.

It is also important to see how far the covenant of the mortgagor to repay the money can be relied upon, although this should not be taken into consideration until the mortgagee has been satisfied as to the value of

the security and the title to it. The covenant of a responsible man is at all times of some value; if, therefore, a mortgagee or his solicitor is satisfied with the mortgagor's responsibility, he will be justified in abating some of the rigour that he would otherwise exercise; and as the irregularity in payment of interest is often a great source of annoyance to clients, it is very desirable to secure a mortgagor who is likely to be punctual. A method now often adopted is to reserve interest at 5 per cent., reducible to 4 on punctual payment.

In lending to a building society, care should be taken to see that it has power to borrow, and that the proposed mortgage is within its powers. Sometimes a society offers a sub-mortgage of property mortgaged to it by one of its members. In such a case the concurrence of the original mortgagor should be obtained if possible, in order to avoid the doubt which has been suggested whether the sub-mortgagee can exercise the power of sale in the original mortgage.[1] The provisions of § 15 of the Building Societies Act, 1894,[2] should be borne in mind.

In the allusions here to the value of property, "marketable value" is meant; in other words, the amount likely to be realized by a forced sale of the property. It often happens that property in mortgage, consisting of mills, manufactories, furnaces, mines, &c., may be of considerable value, but yet unmarketable in times of commercial depression, and in such a case as this, however anxious the mortgagee may be to realize his security, he cannot do so unless the mortgagor be a man of substance, and can be reached under his covenant for repayment of the money. As there are various descriptions of mortgages, it may be of service if some of them are

[1] *Cruse* v. *Nowell*, 25 L. J. Ch. 709.
[2] 57 & 58 Vict. c. 47.

enumerated, and a few remarks made on each. They may be of:—

1. Freehold land, comprising:
   (*a*) Broad acres.
   (*b*) Ground rents.
   (*c*) Houses.
2. Copyhold land or houses.
3. Leasehold land or houses.
4. Freehold, copyhold, or leasehold mills, manufactories, mines.
5. Public houses, theatres, and other places of public resort or entertainment.
6. Life interests.
7. Reversions.
8. Policies of assurance.
9. Furniture, stock in trade, &c.

The following remarks apply principally to the case of a client wishing to invest money of his own—the case of trustees investing trust funds will be dealt with afterwards.

With respect to mortgages of freehold land, a client will usually be safe in advancing to the extent of two-thirds of the value of broad acres or ground rents as certified by a respectable surveyor; but it should be borne in mind that this class of property has seriously depreciated in value, in consequence of agricultural and commercial depression.

With respect to freehold houses, and indeed house property of any tenure, locality is the principal consideration, and if that is good, the property let on lease, the lessee responsible, and the state of repair satisfactory, then freehold houses form a very good security, although the advance of much more than one-half the value of the property is not to be recommended. In the case of new houses, not yet occupied, the mortgagee should ascertain that the certificate of the local authority

that they are fit for occupation has been, or can be, obtained.

Copyhold houses or land, where the fine on death or alienation is certain, that is, nominal, form an investment of little less value than freehold; but in manors where the fine on admittance is arbitrary, that is, at a rough estimation, two years' annual value, the amount of the fine must be taken into consideration in estimating the value of the property, as every person admitted must pay a fine, and consequently a purchaser would give so much less for the property.

Leasehold houses are never looked upon with so much favour as freehold, unless situated in a first-class position. In advising a client who proposes to lend on leasehold security, many things require to be taken into consideration, namely, the amount of ground rent reserved by the lease, the nature of the covenants in the lease (some of which may be very onerous and may not have been duly performed), and the great depreciation of value experienced by this class of property in a time of commercial depression, unless it happens to be situate in a first-class neighbourhood, or to have other advantages.

With regard to house property of any tenure, it is not immaterial to consider whether it is subject to a long lease to a responsible lessee or merely to a short tenancy. In the latter case there is, of course, more risk of the property remaining for some time unlet, and consequently unproductive of income, and in the possible event of the mortgagee finding it desirable to foreclose or to go into possession, this, of course, will become an important consideration.

Sometimes a solicitor has to advise a client as to his advancing money on leasehold ground rents, or, as they are generally termed, "improved rents." These rents arise in this way: a person holds a house under a lease

for, say, ninety years, at a rental of 5*l.* per annum; he grants an underlease of this house for the whole of his term, less a few days, at a rent of, say, 45*l.* Here the improved rental is 40*l.* per annum. In a case like this, precisely the same questions will arise for consideration as to covenants, &c., as in the case of a leasehold house offered as a security; but if these questions are decided satisfactorily, and the rents reserved by the underlease be sufficiently below the rack rent of the property, then improved ground rents will form a better security than any other description of leasehold property.

Freehold, copyhold, or leasehold mills, manufactories, warehouses, theatres, music halls, public houses, restaurants, shops, and other commercial properties, will require very serious consideration before a solicitor advises his client to lend money on them.

Where a mortgage of a public house is taken, inquiries should be made whether the licence has been indorsed and whether complaints as to the character of the house have been made to the police. The licences should be insured, and the mortgagor should covenant to pay the premiums.

With regard to mines, mills, and manufactories, it is true that in mining and manufacturing districts owners of this class of property do not, in prosperous times, find much difficulty in raising money upon it; but this chiefly arises from the fact of the lender having it constantly before his eyes, and in many cases from the personal knowledge he has of the borrower, and the value of the security. In advising as to a mortgage of this description of property, the value of the buildings, steam boiler, machinery, gearing, &c., as estimated by a competent person, and also the responsibility of the borrower, must be carefully considered; and even if everything is satisfactory, not more than one-half of the value should, as a rule, be advanced, because, in the event of a depression

of trade, great difficulty might be experienced in realizing such a security. A mortgage comprising trade machinery other than fixtures must be in the form given in the schedule to the Bills of Sale Act (1878) Amendment Act, 1882,[1] and should contain a schedule of such machinery, and be executed, attested, and registered pursuant to § 10 of the Bills of Sale Act, 1878,[2] as amended by §§ 8, 9, 10 and 11 of the Amendment Act. And under § 14 of the last-mentioned Act a distress for poor and other parochial rates appears to be valid, notwithstanding a previous registered bill of sale of the chattels upon which the distress is levied. A bill of sale which attempts to charge after-acquired chattels is not in accordance with the scheduled form, and is therefore void, if given by way of security for money.[3] But a covenant to replace worn-out articles is good.[4] And a settlement of after-acquired chattels may be supported.[5] And an assignment of future book debts is valid.[6]

Trade machinery does not comprise fixed motive power, shafting, drums, steam-pipes, gas-pipes, or water-pipes.[7] And although certain fixed plant is within the definition of "trade machinery," yet a mortgage of freehold or leasehold land to which plant is fixed passes such plant without express mention, and does not require registration.[8]

If a mortgage which comprises other property as well as personal chattels is not in the statutory form, it is void only as to the personal chattels, and good as to the

[1] 45 & 46 Vict. c. 43.

[2] 41 & 42 Vict. c. 31, § 5.

[3] *Thomas* v. *Kelly*, 13 Ap. Ca. 506.

[4] *Consolidated Credit Corporation* v. *Gosney*, 16 Q. B. D. 24; *Seed* v. *Bradley*, (1894) 1 Q. B. 319.

[5] *Duncan* v. *Cashin*, L. R. 10 C. P. 554; *Courcier* v. *Bardili*, 27 S. J. 276.

[6] *Tailby* v. *Official Receiver*, 13 Ap. Ca. 523.

[7] 41 & 42 Vict. c. 31, § 5.

[8] *Re Yates*, 38 Ch. D. 112; *Re Brooke*, (1894) 2 Ch. 600. See and compare *Small* v. *National Provincial Bank of England*, (1894) 1 Ch. 686.

other property.[1] But a bill of sale which attempts to impose unfair restrictions is not in accordance with the statutory form, and is void,[2] although a covenant to produce the receipt for rent payable by the mortgagor is admissible.[3]

Life interests are seldom taken as securities for money, unless by insurance offices or professed money lenders, and when taken, the mortgagor is required to effect an insurance on his life to secure the repayment of the mortgage money, a life interest in itself being only of value for securing payment of the interest on the money and the premiums on the policy of assurance. The principal is secured by the policy. There are many disadvantages in this description of security. The mortgagor may do some act to avoid the policy, or it may be necessary to call in the money during his lifetime, in which case difficulty may be experienced in finding a purchaser. If a client is seeking an investment for his money, and does not make the obtaining of a high rate of interest his primary consideration, he should never be advised to accept this kind of security. Where the mortgage is of a life interest in real estate, the amount of the *nett* rental should be carefully inquired into. A provision that the mortgagor may exercise the powers of the Settled Land Acts without any further consent by the mortgagee is often useful, and may usually be assented to.

A reversion in any description of property is a very undesirable security, owing to there being no fund available for payment of the interest until the reversion falls into possession. Of course a vested reversion is here meant, as a contingent reversion is never thought of as a security for money about to be advanced, unless

[1] *Ex parte Byrne*, 20 Q. B. D. 310.
[2] *Peace* v. *Brookes*, (1895) 2 Q. B. 451.
[3] *Cartwright* v. *Regan*, (1895) 1 Q. B. 900.

accompanied by a policy of assurance, and even then it is a desperate kind of security. Reversionary interests are always of a certain value, which can easily be ascertained by taking the opinion of an actuary. The character and responsibility of the mortgagor in a security of this nature is the most important consideration, as it enhances its value; but even if that is unexceptional, the security is not a desirable one, and a prudent man, wishing to secure an investment for which a transfer can speedily be obtained, or in respect of which the property can easily be realized in the market, will hesitate before he accepts a reversion as a security.

However undesirable life interests and reversions may be as securities, cases from time to time arise where a client desires to lend money upon them, rather from motives of kindness to a relative or friend than from a desire to enter into a purely business transaction, and in such a case it is the duty of his solicitor to obtain for him the best security that the circumstances render available, and to point out to him what risks he must necessarily incur.

A policy of assurance, considered as a security, ranks still lower than a reversion. There is not only no means of paying the interest on the mortgage money, but the annual premiums on the policy (without punctually paying which the whole security vanishes) must be provided from some source. If these can be guaranteed by the covenant of a third person, the security is thereby improved, but is still undesirable. The value of a policy of assurance may be ascertained at any time by applying to the actuary of the Assurance Society or Company by which the policy was issued, who, for a small fee, will certify the office or "surrender" value, which increases every year the policy is kept up. This kind of security is generally taken in cases where the borrower is previously indebted to the mortgagee, in which case the

latter takes an assignment of the policy, as the best or only security he can obtain.

Last of all comes a mortgage of household furniture, stock-in-trade, or other chattels. This can in no case be recommended to an intended mortgagee, as there is very little more than the personal character of a mortgagor to depend upon: for instance, he might sell the property comprised in the security, and put the money in his pocket, and he is not criminally liable for so doing,[1] unless he comes within § 80 of the Larceny Act, 1861,[2] which does not appear to be the case. Next, the mortgagee is always under the liability of the goods being distrained upon by the landlord for rent in arrear, and if the mortgagor should become bankrupt while in possession, the chattels would, unless the bill of sale were registered, pass to his trustee in bankruptcy as being in his order and disposition. The security is bad at the best, but it is absolutely worthless unless it complies with the stringent provisions of the Bills of Sale Acts, 1878 and 1882.[3] The most important of these requirements are that it must accurately state the true consideration for which it is given, that it must be substantially in the statutory form, and that it must be registered. But no solicitor should attempt to prepare a bill of sale without carefully considering the provisions of these involved and difficult Acts, and the numerous cases which have been decided under them.[4]

Lending Trust Money.—The foregoing remarks are principally applicable to the case of a mortgagee seeking to advance money belonging to himself; but in advising clients who are trustees, too much caution cannot be

[1] *Per* Parke, B., in *Fenn* v. *Bittleston*, 7 Ex. 160.
[2] 24 & 25 Vict. c. 96.
[3] 41 & 42 Vict. c. 31; 45 & 46 Vict. c. 43.
[4] See p. 86, *ante*.

exercised. In the first place it must be borne in mind that, formerly, in the absence of an express trust for, or power of, investment in specified securities, the strict duty of a trustee was to place the trust money in Consols. But trustees are now, by law, authorized to invest trust moneys in any securities specified in § 1 of the Trustee Act, 1893,[1] unless expressly forbidden by the instrument creating the trust.[2] Under § 5, trustees

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[1] 56 & 57 Vict. c. 53.

[2] The following are the investments authorised by this section:—

(A) In any of the parliamentary stocks, or public funds, or government securities of the United Kingdom:

(B) On real or heritable securities in Great Britain or Ireland:

(C) In the stock of the Bank of England or the Bank of Ireland:

(D) In India 3½ per Cent. Stock and India 3 per Cent. Stock, or in any other capital stock which may at any time hereafter be issued by the Secretary of State in Council of India, under the authority of Act of Parliament, and charged on the revenues of India:

(E) In any securities the interest of which is for the time being guaranteed by Parliament:

(F) In consolidated stock created by the Metropolitan Board of Works, or by the London County Council, or in debenture stock created by the Receiver for the Metropolitan Police District:

(G) In the debenture or rentcharge or guaranteed or preference stock of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having during each of the ten years last past before the date of investment paid a dividend at the rate of not less than three per centum per annum on its ordinary stock:

(H) In the stock of any railway or canal company in Great Britain or Ireland whose undertaking is leased in perpetuity or for a term of not less than two hundred years at a fixed rental to any such railway company as is mentioned in sub-section (G), either alone or jointly with any other railway company:

(I) In the debenture stock of any railway company in India, the interest on which is paid or guaranteed by the Secretary of State in Council of India:

(J) In the "B" Annuities of the Eastern Bengal, the East Indian, and the Scinde Punjaub and Delhi Railways, and any like annuities which may at any time hereafter be created on the purchase of any other railway by the Secretary of State in Council of India, and charged on the revenues of India, and which may be authorised by Act of Parliament to be accepted by trustees in lieu of any stock held by them in the purchased railway; also in deferred

having power to invest in real securities may also invest on any charge, or upon mortgage of any charge, made

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annuities comprised in the register of holders of annuity Class D, and annuities comprised in the register of annuitants, Class C, of the East Indian Railway Company:

(K) In the stock of any railway company in India upon which a fixed or minimum dividend in sterling is paid or guaranteed by the Secretary of State in Council of India: or upon the capital of which the interest is so guaranteed;

(L) In the debenture or guaranteed or preference stock of any company in Great Britain or Ireland established for the supply of water for profit, incorporated by special Act of Parliament or by Royal Charter, and having during each of the ten years last past before the date of investment paid a dividend of not less than five pounds per centum on its ordinary stock:

(M) In nominal or inscribed stock issued, or to be issued, by the corporation of any municipal borough, having, according to the returns of the last census prior to the date of investment, a population exceeding fifty thousand, or by any county council, under the authority of any Act of Parliament or provisional order:

(N) In nominal or inscribed stock issued or to be issued by any commissioners incorporated by Act of Parliament for the purpose of supplying water, and having a compulsory power of levying rates over an area having, according to the returns of the last census prior to the date of investment, a population exceeding fifty thousand, provided that during each of the ten years last past before the date of investment the rates levied by such commissioners shall not have exceeded eighty per centum of the amount authorized by law to be levied:

(O) In any of the stocks, funds, or securities for the time being authorised for the investment of cash under the control or subject to the order of the High Court of Justice as prescribed by Ord. XXII. r. 17, which authorises the following investments:—

$2\frac{3}{4}$ per Cent. Consolidated Stock (to be called after the 5th of April, 1903, $2\frac{1}{2}$ per Cent. Consolidated Stock);

Consolidated Three Pounds per Cent. Annuities;

Reduced Three Pounds per Cent. Annuities;

Two Pounds Fifteen Shillings per Cent. Annuities;

Two Pounds Ten Shillings per Cent. Annuities;

Local Loans Stock under the National Debt and Local Loans Act, 1887;

Exchequer Bills;

Bank Stock;

India $3\frac{1}{2}$ per Cent. Stock;

India 3 per Cent. Stock;

under the Improvement of Land Act, 1864. The same section and §§ 6 and 7 also authorize or forbid certain other specified investments in particular cases.

In advising a trustee under a power to invest on "real securities," it must be remembered that copyhold property is a real security, but ordinary leasehold property is not. Such a power, however, authorizes an investment on mortgage of property held for an unexpired term of 200 years or more not subject to a higher rent than 1*s.* per annum, or to any right of re-entry (except for non-payment of rent), or to any equity of redemption.[1] But it does not authorize a *purchase* of real estate.

If a leasehold security (not coming within the above description) be offered to trustees, care must be taken to see that an investment on leaseholds is expressly authorized, and that the term unexpired is sufficient. In case of a security on debentures or stock, it must be seen that the debentures are issued properly, and that the stock is stock, and not shares.

In all these cases, if a trustee does not exceed his

Indian guaranteed railway stocks or shares, provided that in each case such stocks or shares shall not be liable to be redeemed within a period of fifteen years from the date of investment;

Stocks of Colonial Governments guaranteed by Imperial Government;

Mortgage of freehold and copyhold estates respectively in England and Wales;

Metropolitan Consolidated Stock, Three Pounds Ten Shillings per Cent.;

3 per Cent. Metropolitan Consolidated Stock;

Debenture, preference, guaranteed, or rent-charge stocks of railways in Great Britain or Ireland having for ten years next before the date of investment paid a dividend on ordinary stock or shares;

Nominal debentures or nominal debenture stock under the Local Loans Act, 1875, provided in each case that such debentures or stock shall not be liable to be redeemed within a period of fifteen years from the date of investment.

[1] 56 & 57 Vict. c. 53, § 1.

power as to the nature of the security, and does not advance more than the amount authorized by the Trustee Act, 1893, in cases within § 8 thereof, or in other cases, more than a prudent and careful man would advance in dealing with his own money under similar circumstances, he will be protected in what he has done by a Court of Equity; but, as before observed, too much caution cannot be exercised when investing trust money, and in no case should the security be entertained until the valuation of an experienced surveyor has been obtained; and when the mortgage is executed the trustees should retain all the deeds, the *cestuis que trustent* being only entitled to inspect and take copies.

Under no circumstances should trustees, even though the instrument under which they are empowered to advance money extends to such property (a very rare occurrence), be advised to make advances on mills, manufactories, or mines, or, indeed, upon business property of any description. Their position is very different from that of an ordinary lender, who, for the sake of obtaining a high rate of interest, will sometimes be content to incur a little risk as to his security. Trustees ought only to have regard to the value and nature of the security, and the certainty of being able to realize at any time; for, whatever may be the amount of interest obtained, it will not be taken into consideration in favour of the trustees, in the event of the security proving insufficient and a loss accruing to the trust estate, unless the case comes within §§ 4 or 5 of the Trustee Act, 1888.[1]

The writer has gone thus fully into the question of the value of property submitted to a mortgagee, because a solicitor often has to form and give an opinion on the matter; but it should be borne in mind that it is no part of his duty to value a proposed security.[2] In advising

[1] 51 & 52 Vict. c. 59.

[2] *Brumbridge* v. *Massey*, 32 L. T. 108.

trustees who are lending on mortgage, it is his duty to see that they obtain a proper valuation by a competent independent surveyor, *selected by the trustees* and not by the intending mortgagor.[1] It is considered that his report will belong to the intending lenders, if the transaction falls through, even though it may have been paid for by the intending borrowers.

Preparation of Draft.—The title to the property offered as security having been satisfactorily proved, the mortgagee's solicitor will proceed either to prepare the draft mortgage, or send instructions to counsel for that purpose. The draft, when settled, must be fair copied and sent to the solicitor of the mortgagor for perusal by him. He takes a copy of it in the usual manner, and after approving of it returns it for engrossment. The principal differences between a conveyance and a mortgage, where the statutory mortgage referred to in §§ 26 to 29 of the Conveyancing Act, 1881, is not adopted, are as follows:—In a conveyance the agreement for sale or purchase is often recited, and the vendor conveys "as beneficial owner," "as trustee," or otherwise, as the case may be. This implies only qualified covenants for title. In a mortgage, after reciting the agreement for the advance, a covenant for repayment of the principal money and interest is inserted, then follows the conveyance of the property, then the proviso for redemption on repayment of the money. A conveyance "as beneficial owner" by way of mortgage implies absolute (and not qualified) covenants for title. If buildings form part of the security, the mortgagor covenants to insure. Care should be taken to express an intention to exclude § 17 of the Conveyancing Act, 1881,[2] so as to preserve to the mortgagee the right of consolidation in

[1] *Fry* v. *Tapson*, 28 Ch. D. 268; *Re Somerset*, (1894) 1 Ch. 231.
[2] 44 & 45 Vict. c. 41.

the event of his becoming mortgagee of some other estate belonging to the same mortgagor. If it is desired that the mortgagor shall not have power to grant leases, a clause negativing or qualifying the operation of § 18 of the same Act should also be inserted. Where the mortgage is to trustees the consideration will, in the first *testatum*, be stated to be paid "out of moneys belonging to them on a joint account."

Although at one time the contrary opinion was entertained, it is now settled that trustees, if raising money under a power to mortgage, are authorized to give the mortgagee a power of sale in case of default in repayment of the money.[1]

It may also be observed that, in future, a mortgagee will be bound to produce the title deeds to the mortgagor, at the cost of the latter, *notwithstanding any stipulation to the contrary*.[2]

In some cases where the mortgagor remains in actual possession, it was very usual to insert an attornment clause; but this now brings the security within § 6 of the Bills of Sale Act, 1878,[3] so as to render the clause invalid against third parties, unless the mortgage is registered as a bill of sale, which is sometimes impracticable,[4] although, for some purposes, it may create the relationship of landlord and tenant.[5]

Several clauses formerly inserted in mortgages are now usually omitted, as the Conveyancing Act, 1881,[6] confers upon mortgagees under mortgages executed after the 31st

[1] *Russell* v. *Plaice*, 18 Beav. 21; 18 Jur. 254; *Cruikshank* v. *Duffin*, L. R. 13 Eq. 555, 560; but see *Clarke* v. *The Royal Panopticon Society*, 3 Jur. (N. S.) 178; 5 W. R. 332.

[2] 44 & 45 Vict. c. 41, § 16.

[3] 41 & 42 Vict. c. 31.

[4] *Ex parte Kennedy*, 21 Q. B. D. 384; *Green* v. *Marsh*, (1892) 2 Q. B. 330; *Scobie* v. *Collins*, (1895) 1 Q. B. 375.

[5] *Danbery* v. *Lavington*, 13 Q. B. D. 347; *Hall* v. *Comfort*, 18 Q. B. D. 11; *Mumford* v. *Collier*, 25 Q. B. D. 279.

[6] 44 & 45 Vict. c. 41, § 71.

of December, 1881 (unless a contrary intention is expressed in the deed), the following powers:—(1), a power of sale; (2), a power to insure; (3), a power to appoint a receiver; and (4), a power to cut and sell timber.

(1.) The power of sale may be exercised at any time after the principal money becomes due—(*a*), if notice requiring payment has been served on the mortgagor and not complied with for three months; (*b*), if interest has been in arrear for two months; or (*c*), if there has been a breach by the mortgagor of any provision in the deed other than the covenant for payment of principal and interest. A mortgagee exercising the power of sale is enabled to convey the property for such estate or interest therein as is the subject of the mortgage, but this does not enable an equitable mortgagee to convey the legal estate.[1] The corresponding power in Lord Cranworth's Act (applicable to mortgages dated between the 28th of August, 1860, and the 31st of December, 1881) was wider.[2] The Conveyancing Act, 1881, enables a selling mortgagee to give a valid receipt for the purchase-money, and notwithstanding any irregularity or impropriety in any such sale, it will be valid as against a *bonâ fide* purchaser for value without notice. The Act also contains provisions as to the application of the purchase-money, the protection of the mortgagee from liability for involuntary losses, and as to the persons by whom the power may be exercised, similar to those formerly usually inserted in mortgage deeds.

(2.) The power for the mortgagee to insure is limited to the amount specified in the mortgage, or, if no amount is so specified, to two-thirds of the amount necessary to restore the property in the event of destruction by fire. It cannot be exercised if the deed contains a declaration that no insurance is necessary, or

[1] *Re Hodson and Howe*, 35 Ch. D. 668.
[2] *Hiatt* v. *Hillman*, 19 W. R. 694.

if the mortgagor keeps up an insurance equal in amount to that which the mortgagee might otherwise effect.

(3.) The power to appoint a receiver can only be exercised when the mortgagee is entitled to exercise the power of sale; the receiver, when appointed, can recover and give valid receipts for the income of the property, he may be removed by the mortgagee and may retain, by way of remuneration, a commission of 5 per cent., or such less amount as the mortgagee shall have appointed, on the gross amount received by him. He may also insure if directed by the mortgagee to do so. The Act also contains provisions for the application of moneys received by the receiver.

(4.) The power to cut and sell timber can only be exercised by a mortgagee in possession.

These powers are somewhat similar to those usually inserted in carefully settled mortgages before the Conveyancing Acts came into operation—indeed, the power of sale is more favourable to the mortgagee than the one previously in general use. This portion of the Conveyancing Act, 1881, may therefore be relied upon in ordinary cases; and such a course will enable mortgage deeds to be considerably shortened. Although a mortgagee may, if he please, insist upon having all the powers to which he is entitled set out in the mortgage (which is prepared at the mortgagor's expense) it is very seldom that this is done. Of course cases arise in which it is advisable to modify or exclude some of the statutory powers; and for this purpose a few apt words will usually suffice.

The draftsman should remember that the Act confers upon either mortgagor or mortgagee *while in possession* power to grant specified leases without the consent of the other; and this is one of the provisions which are frequently modified.

The usual covenants for title may be safely omitted

in reliance upon § 7, care being taken that the mortgagor conveys "as beneficial owner."

A statutory form of mortgage is also provided by § 25 of the Act of 1881, and this form, in addition to the powers implied by virtue of § § 19—24, implies also a covenant for payment of the principal money and interest, and a proviso for redemption. This form is not shorter than the one given at p. 472, *post*, which contains an express covenant.

It is perhaps scarcely necessary to mention, that, since the repeal of the Acts of Parliament respecting usury, any amount of interest may be reserved on any description of property, and there is now no restriction whatever on this head, the law leaving it to the parties interested to make their own contracts.

Yet the law which precludes a mortgagee from stipulating for any collateral advantage is still in force, and this should be remembered in cases where it is desired to secure for a mortgagee some bonus or other benefit beyond his principal, interest, and costs. The recent cases upon this subject[1] are worthy of attentive perusal, not only from this point of view, but as showing how carefully the Court scrutinizes transactions in which a client is mortgagor and his solicitor mortgagee.[2]

In case freehold and copyhold property form the security, it will be necessary to prepare a surrender of the copyhold property, in addition to the draft mortgage, which should contain a covenant to surrender. If copyhold property alone be mortgaged the surrender and also a further deed will be necessary. The latter will bear date before the surrender and will recite the application for the advance, and the agreement by the mortgagor to enter into the covenants hereinafter contained. The witnessing part will contain the

[1] *James* v. *Kerr*, 40 Ch. D. 449; *Mainland* v. *Upjohn*, 41 Ch. D. 126.
[2] See also *Cockburn* v. *Edwards*, 16 Ch. D. 393.

covenant for repayment, and a covenant "as beneficial owner" to surrender, subject to a proviso for redemption, and, if the security consists of house property, a covenant to insure. It will be advisable in all cases to have the draft surrender perused by the steward of the manor before it is engrossed, otherwise he may make such alterations as may necessitate a new engrossment; few stewards will tolerate any surrender but such as complies with their accustomed form. After the surrender has been approved of by the steward and the mortgagor's solicitor, an appointment must be made with both for all parties to attend at the steward's office to pass the surrender. There will be no necessity, and it is unusual for the mortgagee at that time to take admittance. He can at any time procure admittance, if he should have occasion to sell the property: and, if he is paid off by the mortgagor before being admitted, it is only necessary for the mortgagee to sign a warrant to the steward to enter satisfaction on the mortgage, and the mortgagor becomes in the same position as before the mortgage. Whereas, if the mortgagee were admitted tenant at the time of the surrender, there would be the expense of this admittance, and, on the mortgage being paid off, the additional expense of another surrender by the mortgagee and the admittance of the mortgagor. In such a case the hardship on the mortgagor is the greater, because the admittance of the mortgagee at the time of completing the mortgage does not give him the smallest additional security, and is indeed generally taken (when taken at all) through inadvertence. Should it be inconvenient for the mortgagor to surrender personally, his solicitor will procure a power of attorney from him to a third person, usually his solicitor, empowering him to make the surrender; but he should consult the mortgagee's solicitor before this is done, as a mortgagee is not bound to accept

a surrender by attorney, although it is not often objected to.

Having engrossed the deed the mortgagee's solicitor will forward the draft and engrossment to the mortgagor's solicitor for examination, and arrange with him for an appointment to complete the matter. The completion of a mortgage invariably takes place at the office of the mortgagee's solicitor, except when an existing mortgage is to be paid off, in which case the completion takes place at the office of the existing mortgagee's solicitor. The same searches for judgments, &c., and also at the Registry (if the property is in a register county) should be made as in the case of a purchase.[1]

If any succession or estate duty is payable and not paid, the mortgagor's solicitor should be required to prepare and pass an account before completion, so that he may hand over the official receipt for the duty, in order that the mortgagee may put it with the title deeds forming his security, unless the case comes within § 12 of the Customs and Inland Revenue Act, 1889.[2]

Completion.—At the time appointed the mortgagor will execute the mortgage deed; and should his wife have been made a party in order to bar her right to dower, she will also execute and acknowledge the deed in the usual manner. After this the mortgagee's solicitor must take especial care to see that all the deeds are handed over to him, for which, if required, he will sign a schedule and acknowledgment by the mortgagee that he holds them in that character (although this is now seldom required), and obtain the amount of his costs from the mortgagor, or, which is usually the case, deduct them from the mortgage money. If the property is in Middlesex or Yorkshire the deed must be registered

[1] See p. 63, *ante*. [2] 52 & 53 Vict. c. 7.

unless registered under the Land Transfer Act, 1875, and if it comprises chattels of any description (except in the case of fixtures comprised in a mortgage of freehold or leasehold land), it must be registered under the Bills of Sale Acts.

INSURANCE.—Where there is any doubt as to the sufficiency of the security or the ability of the mortgagor to fulfil his obligations, it will be prudent for the mortgagee to insure his mortgage. This can be done upon application to one or other of certain recently established and reliable companies in consideration of a small premium.

COSTS.—The mortgagor pays the whole of the costs—not only of his own, but also of the mortgagee's solicitor. In acting on behalf of a person having money to advance on mortgage, a solicitor should take care, in cases where he is not also employed by the mortgagor, to obtain the written undertaking of the mortgagor or his solicitor to pay his charges in case the negotiation goes off on a matter of title, or on any other point except the default of his own client. Unless he arms himself with this undertaking he cannot recover his costs from the intended mortgagor, if the mortgage should go off; and this is practically losing them altogether, as his own client will neither expect to pay them nor care to enforce his rights against the intended mortgagor.[1]

RECONVEYANCE.—When a mortgagor wishes to pay off his mortgage, his solicitor prepares and forwards to the solicitor of the mortgagee a draft of the reconveyance or reassignment for perusal. If the equity of redemp-

[1] *Rigley* v. *Daykin*, 2 Y. & J. 83; *Wilkinson* v. *Grant*, 18 C. B. 319; *Pratt* v. *Vizard*, 5 B. & A. 808; 2 N. & M. 455; *Hollis* v. *Claridge*, 4 Taunt. 807.

tion has been dealt with, the mortgagee is entitled to investigate the title of the person claiming a reconveyance, in order to satisfy him that he is not conveying to a mere stranger.[1] The solicitor for the mortgagee will peruse the draft in the usual manner, keep a copy of it, and then return it for engrossment to the mortgagor's solicitor, who will afterwards forward the draft and engrossment to the mortgagee's solicitor for examination, or, if the reconveyance or reassignment be by indorsement on the original mortgage (a very common and convenient practice), he will request the latter to engross the document on the mortgage deed (for which he will be entitled to the usual charge of 8*d.* per folio). The mortgagor's solicitor will then appoint a time for attending to pay the principal and interest and costs, and take away the deeds. A mortgagor or a *puisne* incumbrancer may require a mortgagee, who has not been in possession, to execute a transfer instead of a reconveyance if he prefers that course, and a requisition to this effect by any incumbrancer prevails over any requisition by a subsequent incumbrancer or by the mortgagor.[2] A mortgagor often finds it convenient to adopt this course when he is borrowing the money to pay off the mortgage from a third person.

If a mortgagee insists upon it, he is entitled to six months' notice of the mortgagor's intention to pay him off, or to six months' interest in lieu of notice.

When the equity of redemption is sold the matter is completed, as in the case of an ordinary sale, at the office of the vendor's solicitor.

Costs on Reconveyance.—As to a mortgagee's costs on the mortgagor paying off the mortgage, it may be observed that, if in consequence of the death of the

[1] *Pearce* v. *Morris*, L. R. 5 Ch. 227.

[2] *Teevan* v. *Smith*, 20 Ch. D. 724; 45 & 46 Vict. c. 39, § 12.

mortgagee any additional expense is occasioned, the mortgagor must pay it; but the rule is otherwise if the mortgagee has settled the mortgage money.

In the event of the death or lunacy of a mortgagee a reconveyance could not formerly be obtained without considerable delay and expense. In the event of death the legal personal representative of the mortgagee can, by virtue of § 30 of the Conveyancing Act, 1881,[1] convey the legal estate, but in the event of lunacy it is still necessary to obtain a vesting order, the cost of which falls upon the mortgagee's estate, but this does not include the costs of the mortgagor's appearance.[2]

SALE BY MORTGAGEE.—If a mortgagee finds it necessary to exercise his power of sale, his solicitor's course of proceeding will be similar to that pointed out in the chapter on "Sales of Real Estate."[3] In some cases notice must be given to the mortgagor or to the *puisne* mortgagee, if any. If a receiver is in possession, an application to the Court may be necessary. After the purchase-money has been received he will, in the first place, deduct thereout the costs of and incidental to the sale; in the next place, the mortgagee will retain his principal and interest, and any moneys he may have properly paid for insurance or otherwise, and the balance will be paid to the mortgagor. In arriving at this balance it should be borne in mind that the mortgagor must pay the expense of an abortive sale;[4] and also of an action of ejectment brought by the mortgagee to recover possession, but not the costs of defending an action of trespass,[5] nor the costs of an unsuccessful action for specific performance of a contract

[1] R. P. Statutes, 272.

[2] *Re Wheeler*, 1 D. M. & G. 134; *Hawkins* v. *Perry*, 25 L. J. Ch. 656; *Re Phillips*, L. R. 4 Ch. 629; *Re Sparks*, 6 Ch. D. 361.

[3] *Ante*, pp. 10—40.

[4] *Sutton* v. *Rawlings*, 3 Ex. 407.

[5] *Owen* v. *Crouch*, 5 W. R. 545.

for sale by the mortgagee.[1] If the mortgagee has been served with a notice by a second mortgagee of the property, his security must be inspected by the vendor's solicitor, and if it is correct, the balance of purchase-money, or so much thereof as may be required, will be paid to such second mortgagee, and any residue to the mortgagor. In such a case as this, however, it would be the preferable course before parting with the money to the second mortgagee to inform the mortgagor of the intention to do so, and if he assents, or returns no answer to such notice, the payment may be safely made.

Whether a mortgagee sells under an express or statutory power, he can give a valid receipt for the purchase-money, although his mortgage may contain no power to give receipts, at any rate if it is dated subsequently to the 13th of August, 1859. § 23 of Lord St. Leonards' Act, 1859,[2] applies to the case of a sale under an express power, while § 12 of Lord Cranworth's Act[3] (as to mortgages executed between 28th August, 1860, and 31st December, 1881), and § 22 of the Conveyancing Act, 1881,[4] apply to sales under the powers conferred by those Acts respectively.

In some cases it may happen that after the sale of the mortgaged property has been completed, the mortgagor cannot be found, or he may be dead, and it may not be known who are his representatives, or several claimants may appear, each one requiring the mortgagee to pay the surplus in his hands to him, or the mortgagor may be living, and may have given notice not to pay the surplus to a subsequent mortgagee. In any of these cases, if no satisfactory arrangement can be come to, the better course will be to pay the surplus into Court under

[1] *Peers* v. *Ceeley*, 15 Beav. 209.
[2] 22 & 23 Vict. c. 35.
[3] 23 & 24 Vict. c. 145.
[4] 44 & 45 Vict. c. 41.

the Trustee Act, 1893,[1] and let the claimants satisfy the Court as to their claims. This course is justifiable,[2] and it will relieve the mortgagee from all responsibility with respect to the money. He may deduct his charges in the matter out of the fund before paying it into Court, and the costs of his appearance on the petition or summons to take the money out of Court will come out of the fund. No undue haste need be shown by the mortgagee in paying the money into Court under the above Acts, as it has been decided that a mortgagee, selling under a power of sale and retaining the surplus purchase-money unproductive in consequence of disputes between subsequent incumbrancers, is not chargeable with interest on such surplus.[3]

A statutory mortgage under § 26 of the Conveyancing Act, 1881, may be reconveyed by a statutory reconveyance under § 29 of the same Act.[4]

TRANSFERS.—Transfers of mortgages are very frequent. A mortgagee amply secured, and receiving his interest punctually, may require his principal money for some purpose. The mortgagor may wish to continue the mortgage. The requirements of both are met by a transfer. A third person, with money to lend, is sought for, and, when found, comes into the matter as transferee; that is, he consents to pay the mortgagee off, and take a transfer of the security.

A mortgagee can transfer his mortgage either with or without the concurrence of the mortgagor, but in practice the former course is often adopted; first, because unless the mortgagor is an assenting party to the transfer the costs of it would have to be borne by the mort-

[1] 56 & 57 Vict. c. 53, § 42.
[2] *Roberts* v. *Ball*, 24 L. J. Ch. 471; *Re Walhampton Estate*, 26 Ch. D. 391.
[3] *Matthison* v. *Clark*, 4 W. R. 30.
[4] 44 & 45 Vict. c. 41.

gagee,[1] and of course under ordinary circumstances, and where his security is ample, he would rather proceed to a sale or foreclosure of the property than be saddled with the expense of a transfer; and secondly, it is always desirable for the transferee that the mortgagor should join in the deed, by which in effect a new mortgage is made from the mortgagor to the transferee with privity between them, and a new covenant for payment of the principal and interest is given.

Where the same solicitor is concerned for all parties in a transfer the matter is very simple. When instructed he will learn whether a further sum is to be advanced to the mortgagor (as is often the case) or not, and will prepare his deed accordingly, make an appointment for the parties to attend at his office, calculate the amount of principal and interest due to the mortgagee, get the deed executed by him and the mortgagor, pay the mortgagee his money, and get the amount of his charges from the mortgagor, who, as the business is done for his accommodation, will pay all the attendant expense.

If he acts for the mortgagee but not for the transferee, the solicitor of the latter will probably apply to him for an abstract of the mortgagee's title, which, under ordinary circumstances, will be prepared and sent to him; for though a solicitor is not bound to do so, nor indeed to do any act which possibly might prejudice the security of his client, the abstract is in most instances, with respectable persons, furnished as a matter of course, because it generally happens that a personal interview has taken place, or the transferee's solicitor, on applying for the abstract, states that his client is about to pay off the first mortgagee.

If and when the solicitor of the transferee is satisfied about the title, he will send the draft transfer to be

[1] *Re Radcliffe*, 2 Jur. (N. S.) 387.

perused on behalf of the mortgagee and mortgagor, and their solicitors will accordingly peruse it, with a view of protecting the rights of their respective clients, have the usual copy to keep made, and return the draft approved of (with such alterations, if any, as may be necessary) to the transferee's solicitor, who, when the draft is finally approved of, will have it engrossed, and fix an appointment to settle the business at the office of the solicitor to the mortgagee, which the parties will attend, and the matter will be completed. As in the case of a reconveyance, it is desirable whenever practicable to engross the transfer on the original mortgage deed. Notice of the transfer should be given to the mortgagor if he is not a party, unless the mortgage is in the statutory form. As to the liabilities of the parties when the mortgagee has been in possession, see *Hall* v. *Heward*.[1]

A statutory mortgage under § 26 of the Conveyancing Act, 1881,[2] may be transferred by a statutory transfer in the form specified in Part II. of the Third Schedule to the Act.

Stamps.—A reconveyance—like a transfer of a mortgage—requires an *ad valorem* stamp equal to 6*d.* per 100*l.* of the consideration money.

[1] 32 Ch. D. 430.
[2] 44 & 45 Vict. c. 41.

CHAPTER V.

LEASES.

Introductory.—In preparing a lease a solicitor is often required to act on behalf of both parties, *i.e.*, the lessor and lessee; and this he may with propriety do in cases where they themselves fix the terms upon which the lease is to be granted, and in cases where the lessee is willing to accept the terms proposed by or on behalf of the lessor. In such cases a solicitor's duty is not of such a conflicting character as it would be were he concerned for a vendor and purchaser, as the lessor very often fixes the terms on which the lease is to be granted, and declines to accept any other terms.

There are, however, many cases where questions are likely to arise between lessor and lessee, and in such cases they should be represented by separate solicitors. It will, therefore, be convenient to consider separately the duties incumbent on a solicitor acting for lessor and lessee respectively.

If the property is very small, or both parties are content to leave the business in the solicitor's hands, there will be no necessity to prepare any formal agreement; but in all other cases a preliminary agreement should be prepared. This should be done with the same care as in the case of an agreement for a sale, for sometimes the lessee repents of his bargain before the lease is granted, and will then use every exertion to get out of

his contract. The principal points to be attended to in the preparation of such an agreement are mentioned at p. 114, *post*.

PART I.—DUTIES OF LESSOR'S SOLICITOR.

POWER TO LEASE.—The first question to be considered is whether the intending lessor has power to grant the lease proposed. In the case of an owner in fee simple of freeholds (other than an infant or married woman) no difficulty will arise; but the lessor may be a tenant for life or in tail of a settled estate, or a mortgagor, a mortgagee, a copyholder, or only a lessee. In all these cases some care will be necessary.

Infant.—Where an infant was tenant in fee simple or in tail of real estate, or absolutely entitled to any leasehold estate, the Chancery Division of the High Court of Justice had power, before the passing of the Conveyancing Act, 1881, to authorise leases of such estate,[1] although it might not be a "settled estate" within the meaning of the Settled Estates Act, 1877.[2] And the Conveyancing Act, 1881,[3] provides that where a person, in his own right seised of or entitled to land for an estate in fee simple or for any leasehold interest at a rent, is an infant, the land shall be deemed to be a settled estate within the Settled Estates Act, 1877.

The effect of this provision was to enable the guardian (appointed under the Act by a judge of the Chancery Division) of an infant owner to apply to the Court by petition on behalf of the infant for liberty to grant a lease; and perhaps, also, to enable such guardian to grant leases of the description specified in § 46 without any application to the Court.

[1] 1 Wm. 4, c. 65, § 17.
[2] 40 & 41 Vict. c. 18.
[3] 44 & 45 Vict. c. 41, § 41.

By virtue of §§ 59 and 60 of the Settled Land Act, 1882,[1] such leases as are specified in the Act[2] may be granted on behalf of an infant owner by the trustees of the will or settlement under which his interest arises if they are trustees with a power of sale, or "trustees of the settlement" for the purposes of the Settled Land Acts. If there be no such trustees the Court will, on the application of the guardian or next friend of the infant, appoint a person to grant a lease on his behalf.

Married Woman.—Where the proposed lessor is a married woman, entitled for her separate use, and not under any such further disability as to render an application to the Court necessary, she can grant a lease without her husband's concurrence, but if she is *not* entitled for her separate use, her husband should concur in the lease, which should be acknowledged pursuant to § 79 of the Fines and Recoveries Act,[3] as amended by § 7 of the Conveyancing Act, 1882.[4]

Settled Estates.—Such ample powers of leasing are conferred on all tenants for life and other limited owners by §§ 6 to 14, inclusive, of the Settled Land Act, 1882,[1] that an application to the Court under the Settled Estates Act, 1877, will very rarely be necessary. As to the persons by whom these powers may be exercised, see §§ 2, 58, 59, 60, 61 and 62. It must be remembered, however, that the Settled Estates Act, 1877, is (with the exception of § 17) unrepealed; and therefore a tenant for life may, in some cases, still lease under § 46 of that Act as well as under the Settled Land Act, 1882. In some cases the will or settlement contains wider powers than those of the Settled Land Act; but if such powers

[1] 45 & 46 Vict. c. 38.
[2] §§ 6—9; R. P. Statutes, 479.
[3] 3 & 4 Wm. 4, c. 74; R. P. Statutes, 370.
[4] 45 & 46 Vict. c. 39; R. P. Statutes, 346.

are vested in trustees they cannot be exercised without the consent of the tenant for life.[1]

Mortgagor.—In the case of mortgaged property, it must be borne in mind that if the mortgage is dated prior to the 1st of Jan., 1882, the mortgagor alone cannot make a lease binding on the mortgagee,[2] unless the mortgage contains a power enabling him to do so, or the provisions of § 18 of the Conveyancing Act, 1881,[3] have been, by agreement in writing, dated subsequently to the 31st of December, 1881, applied to the mortgage.

If, however, the mortgagor should grant a lease, it would be binding upon him by estoppel; and a lessee claiming under a lease granted by a mortgagor after the execution of the mortgage, will be protected in paying rent to the mortgagor until he receives notice from the mortgagee to pay the rent to him. Even if he has received such notice, but has not actually paid the rent to the mortgagee, the receipt of such notice will be no answer to an action by the mortgagor for the rent.[4]

But as to all mortgages made after the 31st of December, 1881, the mortgagor, if in possession, has, under § 18 of the Conveyancing Act, 1881,[3] power to grant an agricultural or occupation lease for 21 years, and a building lease for 99 years, unless precluded by his contract with the mortgagee. Every such lease must take effect in possession not later than twelve months after its date, must reserve the best rent reasonably obtainable without fine, and must contain a covenant for payment of rent, and a condition of re-entry on breach of such covenant for a time not exceeding thirty days. A counterpart must be executed and delivered to the first mortgagee. A building lease may be in

[1] 45 & 46 Vict. c. 38, § 56; R. P. Statutes, 522.
[2] See *Lows* v. *Telford*, 1 Ap. Ca. 415.
[3] 44 & 45 Vict. c. 41.
[4] *Wilton* v. *Dunn*, 17 Q. B. 294.

consideration of the erection of buildings within the first five years of the term, and may reserve a peppercorn rent during such five years. The powers conferred by this section may be excluded or varied by the mortgage deed.

Mortgagee.—A mortgagee in possession under a mortgage made after the 31st of December, 1881, or under an earlier mortgage to which the provisions of the last-mentioned section have been extended by agreement in writing, dated after the 31st of December, 1881, has the same statutory powers as a mortgagor in possession. In other cases a mortgagee has, properly speaking, no power to grant a lease, unless the mortgage contains a power enabling him to do so; but if the lease granted by him be a beneficial one to the estate and for an ordinary term, and such as a prudent man would grant if the property were his own, it would probably be supported in equity; and one would not hesitate to advise a mortgagee to adopt this course if it were the only one by which he could make the property productive. If the mortgage contains an express power enabling the mortgagee to grant leases, it will only be necessary to see whether the lease proposed to be granted is within the terms of the power.

In cases to which the statutory powers do not apply, the proper course is, in the absence of an express power, to make both the mortgagor and mortgagee parties to the lease. The mortgagee by direction of the mortgagor will demise, and the mortgagor will demise and confirm the property to the lessee. The rent will be reserved generally in this form: "Yielding and paying therefor yearly during the said term the rent of £——," as the law will carry the rent to the party for the time being entitled to the property, it being unnecessary to mention in the *reddendum* the name of the person to whom the rent is to be paid. Sometimes a proviso is

inserted that the rent may be paid to the mortgagor until the lessee shall receive notice requiring him to pay it to the mortgagee.

Copyholds.—With respect to copyhold property, it will, as a rule, be necessary to obtain a licence from the lord of the manor before the lease is executed, as the grant of a lease by a copyhold tenant, without previously obtaining a licence from the lord of the manor, may be a forfeiture of the copyhold. In this case it will only be necessary to write to the steward of the manor for a licence, informing him of the names of the parties, the property to be demised, and the term to be granted, and he will usually forward a licence to grant the lease, for which he will charge a fee, and a small fine will also generally become payable to the lord. These fines and fees, if not otherwise provided for by the agreement, must be paid by the lessor.

It should be remembered that § 14 of the Settled Land Act, 1882,[1] empowers the tenant for life of a settled manor to grant licences to copyholders to make any such leases as a tenant for life may make under that Act.

A licence to demise for more than a year is necessary in most cases; but there are a few exceptions: for instance, in the manor of Highbury a copyholder may grant a lease for twenty-one years without licence;[2] and in the manors of Stepney and Hackney a copyholder may grant a lease for thirty-one years and four months in possession without licence, if the lease be presented to the homage, and entered on the Court rolls at the first or second Court after making it.[3]

Leaseholds.—A lessee can, of course, only grant an underlease; and, for his own protection, it must be

[1] 44 & 45 Vict. c. 38; R. P. Statutes, 485.
[2] *Rawstone* v. *Bentley*, 4 Bro. C. C. 415.
[3] Scriven on Copyholds, 6th ed. p. 193.

granted upon terms similar to those upon which he holds the property.

Preparation of Agreement.—In cases where an agreement is necessary it must specify the terms on which the lease is to be granted. The agreement is prepared by the lessor's solicitor, who must, if acting for a limited owner, take care to insert all necessary restrictions, and if not, make particular inquiry of his client whether the lessee is to be restricted from carrying on any particular trades or businesses, or any trade or business at all on the property, whether he is to be restricted from having any sale of household furniture or other things thereon, from assigning or parting with the lease or the possession of the premises without the licence of the lessor, and also as to any other special covenants it may be necessary to insert, as all these should be concisely mentioned in the agreement. All this may be done, and the agreement still comprised within reasonable limits.

Where the agreement is for an underlease, the best course will be to read the covenants in the original lease to the person intending to take such underlease, and then state in the agreement that the underlease is to contain similar covenants to those in the lease under which the lessor holds the property; after which it will only be necessary to state shortly what other covenants (if any) are to be inserted.

With respect to the production of the lessor's title, where the agreement is silent as to it, the lessor need not now, if a freeholder, produce his title.[1] And § 13 of the Conveyancing Act, 1881, provides that, "on a contract to grant a lease for a term of years to be derived out of a leasehold interest, *with a leasehold reversion*, the intended

[1] Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78, § 2).

lessee shall not have the right to call for a title to *that reversion*." It will be observed that this section does not negative the right of an underlessee to call for his immediate lessor's own title, but merely to call for the title to the reversion, and that only where the reversion is leasehold. Where the reversion is freehold the case is within § 2 of the Vendor and Purchaser Act, 1874. In cases not provided for by either of these sections the result of the decisions appears to be that, though the lessee could not compel the production of his lessor's title, he could recover damages for breach of contract;[1] and the lessor could not, if he refused to furnish his title, enforce specific performance of the contract to take the lease. In such cases, therefore, the right to production or investigation of the lessor's title should be expressly negatived.

When a person proposes to grant a beneficial lease of a valuable property in consideration of a premium in addition to the rent, it is often to his interest to satisfy the proposed lessee that he has a good title—or at any rate, ample power to grant a valid lease in the form proposed. This is especially the case where the lessee intends to spend large sums in building upon or otherwise improving the property.

If the intended lease be for building purposes, it will be necessary to insert stipulations as to making roads, sewers, pavements, &c., and for the fencing off by the lessee of the demised land from the other land of the lessor within a given time. If, on the other hand, it is an agricultural lease, or a lease of a house with farming land attached, it will be necessary to state in the agreement the manner in which the lessee is to use the land, and what provisions the lease is to contain as to rotation of crops and mode of cultivation, &c.; but whatever may

[1] *Stranks* v. *St. John*, L. R. 2 C. P. 376.

be the nature of the property, care should be taken, unless the parties agree to the contrary, to stipulate in the agreement that the lessee shall pay the land tax, sewers rate, and all other rates, taxes, charges, and assessments whatsoever, as, if this be omitted, the lessee may possibly, and in some cases successfully, resist being made liable to the payment of the two first-mentioned charges. Whether he is bound to pay them will depend altogether on the wording of the agreement.[1]

The same remark applies to charges for private improvement expenses under the Public Health Act, 1875.[2]

Tithe rent-charge is now payable by landowners, and any contract since the 25th of March, 1891, attempting to make it payable by an occupier is void.[3] A clause should also be inserted that the lease and a counterpart thereof shall be prepared and engrossed by the lessor's solicitor, and that the expenses thereof and also of the agreement shall be paid by the lessee. This will prevent the lessee's solicitor from claiming to engross the counterpart. An agreement for a lease should never provide that the lease shall contain "the usual covenants," but should shortly specify the covenants and other clauses which are to be inserted.

The agreement being prepared, the lessor's solicitor will make a fair copy thereof and forward it to the solicitor of the lessee for perusal, who will return it, approved of, either with or without alterations. When it has been finally settled it will be engrossed, executed in duplicate and exchanged, as pointed out in the chapter on "Agreements."[4]

Preparation of Lease.—The agreement having been

[1] Redman & Lyon, 3rd ed. pp. 178, 179.
[2] *Aldridge* v. *Ferne*, 17 Q. B. D. 212; *Wilkinson* v. *Collyer*, 13 Q. B. D. 1.
[3] 54 & 55 Vict. c. 8, § 1.
[4] *Ante*, p. 7.

exchanged, the lessor's solicitor will proceed to prepare the draft lease, the stipulations to be inserted in which will be regulated by the agreement previously entered into. These stipulations, however, will have to be clothed in appropriate and legal language as concisely and clearly as practicable. Where the agreement has been carefully settled, the lease will be easily prepared with the aid of the forms in any standard collection of Conveyancing Precedents.

A lease is sometimes granted under a power, in which case the power may be recited or the lease prepared in the common form. It is of little importance which course is adopted, although if the lease is a valuable one or of extensive property, it is usual to shortly recite the power and make the lessor demise (following the words of the power) in exercise thereof, but, in any case, the conditions under which the person empowered to grant the lease is enabled to do so must be strictly complied with. This rule applies as well to a lease granted under a statutory power as to one granted under an express power in a deed or will.

If the agreement provides that the lease is to contain ordinary covenants, or is silent as to the covenants to be inserted, or if no agreement has been entered into, it is advisable to insert only such covenants and other provisions as have been decided to be "usual," as the lessee's solicitor will almost certainly object—and with success—to the insertion of others. The usual covenants are to pay rent, rates and taxes (except land tax, sewers rate, and tithes or rent-charge in lieu of tithes), to repair during the term, and to yield up the premises in good repair at the end of the term, that the lessor may from time to time during the term enter on the premises to view the state of repairs thereof, and that the lessee will repair within a given time (usually three months) after notice. Also a covenant by the lessor for quiet

enjoyment.[1] Whether the agreement be to grant a lease to contain "ordinary" covenants or "usual" covenants, or contain no mention of covenants, or the agreement be only verbal, the above are the covenants that the lessor could insist upon. He may also insist upon a power of re-entry on non-payment of rent, but not on breach of covenant.

If the lease is of agricultural, mining, or manufacturing property, the covenants will be those usually inserted in leases of similar property in the neighbourhood. Moreover, in agricultural and manufacturing and mining districts the customs vary considerably, and that which in one county would be a very appropriate form of lease would in another be quite the contrary.

Even with respect to the lease of a house, the locality would to a certain extent be taken into consideration, and a covenant not to use the property as a shop, or to carry on any trade or business, would be considered a usual covenant in a lease of a house in one of the principal residential streets at the west end of London, though not in a trading street. But it is clear the lessor could not require the lessee to enter into a covenant to insure or not to assign or underlet without licence, or to contribute towards planting and keeping in condition any inclosed piece of ground, or covenants of a similar nature.

Of course where no binding agreement has been entered into, and the lessee is very eager to obtain his lease, he will often consent to the insertion of covenants which could not be insisted upon under an open agreement.

In leases of old houses it is desirable to insert a proviso enabling either party to determine the lease in the event of the property becoming dangerous under § 160 of the Public Health Act, 1875.[2]

[1] See Davidson, Vol. V. Part I. p. 53.

[2] 38 & 39 Vict. c. 55.

Attention may here be drawn to the statutory provisions as to the benefit and burden of covenants running with the reversion,[1] and as to the apportionment of conditions on severance of the reversion.[2]

Where a lessee grants an underlease, care must be taken to make the term less by a few days than that of the original lease. An underlease for the entire term operates as an assignment.[3]

COMPLETION.—Having prepared the draft lease, the lessor's solicitor will make a fair copy of it; and send it to the solicitor of the lessee for perusal. He will return it, and if no alterations are made, or none that can fairly be objected to, the next step will be to engross the lease. Sometimes a long correspondence and several interviews take place before the draft is finally settled.

The lease, together with a counterpart thereof, having been engrossed, the draft and engrossments must be forwarded to the lessee's solicitor; but if there is no agreement, or if it is silent as to who is to engross the counterpart, the lessee's solicitor may claim to do it, although this is not usually insisted upon.

After comparing the engrossment with the draft lease, the lessee's solicitor will return it for execution by the lessor; and if he has engrossed the counterpart, he will forward such engrossment at the same time, in which case it must be compared with the draft, and returned to him for execution by the lessee. The lessor's solicitor's costs relating to the transaction should be forwarded to the lessee's solicitor about this time, in order that he may have an opportunity of examining them, and, if necessary, obtain the amount from his client. After the execution of the lease by the lessor, his solicitor will

[1] 44 & 45 Vict. c. 41, §§ 10, 11; R. P. Statutes, 234.
[2] 22 & 23 Vict. c. 35, § 3; 44 & 45 Vict. c. 41, § 12.
[3] *Beardman* v. *Wilson*, L. R. 4 C. P. 57.

make an appointment with the lessee's solicitor for the completion of the matter at the office of the former. At this meeting the lease will be exchanged for the counterpart, which the lessor's solicitor must examine to see that it is duly executed and attested. The lessee's solicitor will pay the costs, and the matter will be completed.

Costs.—The costs of the lease, as well on the part of the lessor as the lessee, must be paid by the latter, unless there is an agreement to the contrary; but the costs of the lessor's solicitor, respecting the negotiations for granting the lease, or, in the case of copyhold property, the steward's fees for granting a licence to demise, do not form any part of these costs. As against the lessee, the costs of the lessor's solicitor should, in the absence of any agreement to the contrary, commence with "instructions for lease," and include all the costs incurred by the lessor in respect of the lease, up to the completion of the matter. If a plan is made and referred to in the lease, the lessee must pay the costs of it. In some cases a special agreement is made for the lessor and lessee to pay the costs in equal shares: and this is by no means an unfair arrangement.

Stamps.—As to the proper stamps, see page 129, *post.*

Part II.—Duties of Lessee's Solicitor.

In cases where an intended lessee consults his solicitor with reference to an agreement for a proposed lease, the solicitor's duties will be very similar to those which devolve upon him when perusing an agreement on behalf of an intending purchaser. He must carefully explain to his client the nature and effect of the various covenants and other clauses which, under the agreement as drafted, are to be inserted in the lease. If his client

objects to any of them, considerable tact will often be necessary in negotiating with the lessor's solicitor for a modification of the draft agreement.

In many cases, however, the lessee's solicitor is not consulted until the draft lease is laid before him by his client, or forwarded to him by the lessor's solicitor for perusal.

Perusing Draft Lease.—The draft lease is prepared by the solicitor of the lessor, and he forwards it to the lessee or his solicitor for perusal. On receiving the draft, the lessee's solicitor should make an appointment with his client for reading through the draft; or, if he lives at a distance, send it to him for perusal. In either case his solicitor should call his attention to any covenants or stipulations he may think objectionable, and inform him whether they can be insisted upon by the lessor, and take his instructions accordingly. The first thing his attention will be directed to is to see that the property is correctly described, and that the covenants are not of a nature calculated to interfere with the full enjoyment of it by the lessee, although in the majority of cases he will not be able to do more than obtain some slight modification of any objectionable covenants, and in others he will not be able to obtain any modification at all. It may happen that the person granting the lease is himself a lessee, in which case, as a matter of course, all the covenants and stipulations under which he holds the property will be repeated in the lease he is granting. In other cases the only course will be to turn to the written agreement, if there is any, between the parties; and should no agreement have been entered into, it will be for the lessee, if his solicitor is unsuccessful in obtaining a modification of the objectionable covenants, to elect whether or not he will take the lease. In assisting him to make this election the nature and probable effect of the covenants in question should be fully explained to him. If, however, the parties

have entered into a prior binding agreement, then the terms of such agreement must be carried out, as the lessor or lessee will be able to enforce specific performance of it.

The covenants to be inserted will, of course, be governed by the agreement, if one exists. If not, they will usually be those mentioned at page 117, *ante*. A covenant prohibiting the lessee from assigning or underletting or parting with the possession of the property for the whole or any part of the term, without the written consent of the lessor, is very objectionable, and seriously affects the marketable value of the property. This covenant is unreasonable, inasmuch as its tendency is to restrain the lessee in the enjoyment of the property and the free alienation thereof, and ought never to be consented to in a lease of ground intended to be built upon. Take the case of a man having a field which he leases for a long term of years to persons who wish to erect buildings upon it; this is neither more nor less than a sale of the property for the specified number of years under certain conditions; but instead of receiving the consideration money at once, the lessor prefers to reserve a yearly payment, and the understanding implied between the parties always is, that the one shall give up possession of the land to the other for a certain term at a ground rent, in consideration of such other erecting buildings on the land and consenting to certain stipulations. The lessee ought to be unfettered as to his enjoyment of the property and the free disposal of it, and it is unfair on the part of the lessor to insist on the lessee obtaining his sanction before he can deal with it. It is clear that, by the erection of a house or other valuable building on the land, the lessor is made practically sure of his ground rent, which bears but a small proportion to the annual value of the improved property; and the covenants in the lease will always enable the lessor to insist on the property being kept in

good repair, and free from damage by fire, in order that at the end of the term he may enjoy the benefit of the outlay of the lessee. Moreover, it should not be forgotten that the original lessee remains liable on the covenants even after he has assigned.

That is all that a lessor ought to ask for, unless, indeed, he likes to stipulate that the lessee or assignee shall furnish him with a copy of every assignment, within a given time after its execution, or with the date of the assignment and the name and address of the assignee, so that he may know from time to time who is his immediate tenant. Large landowners like to keep a record of the persons who ought to pay rent to them, especially where leases are (as is often the case in Lancashire) for 999 years or other long terms. This is not an unreasonable request, and it leaves the lessee in the full unrestrained enjoyment of the property.

If, however, the covenant not to assign be inserted, a proviso should be added at the end of it that the consent of the lessor to any assignment or underlease shall not be capriciously or unreasonably withheld, nor withheld at all, to a responsible assignee, and this is the next best step to obtaining the total omission of the covenant. If such consent should then be unreasonably withheld, the lessee will be entitled to assign without any consent.[1]

In some cases the solicitor to the lessor will insert a covenant that all assignments and underleases shall be prepared by him. This is a most unfair covenant, inasmuch as it does not in any way add to the security of the lessor, and the only effect of its insertion is to put costs in his solicitor's pocket. It is not very often at the present day that such a covenant as this is inserted; but where it is inserted it is binding. It is, however, generally found that the lessor's solicitor waives his

[1] *Sear* v. *House Property Investment Society*, 16 Ch. D. 387.

right to the preparation of the deed on receiving a fee of two or three guineas. A more reasonable covenant in the case of a large estate is that every assignment and underlease shall be registered at the office of the lessor's solicitor, so that he may always know who is the occupier of every house.

Where the lessor is a copyholder, the lessee's solicitor should see that the lease is one which is authorized by the customs of the manor, or that the lord has granted to the lessor a valid licence to demise. Although the lord may only be tenant for life of the manor, he may, under § 14 of the Settled Land Act, 1882,[1] grant a licence binding on the remaindermen.

If the lease is of coal or iron mines, the lessee's solicitor will, unless there is an express stipulation to the contrary, be careful to insert a provision for cesser of rent, in case the mine is exhausted, or becomes unworkable during the term. This is not an unfrequent case. The lessee may have formed an erroneous opinion as to the quantity of coal, ironstone, or other mineral to be obtained, or the mine may become filled with water, or become otherwise unworkable. Now, in leases of this description of property there is invariably a minimum rent reserved, and the ordinary *reddendum* clause would bind the lessee to pay such rent, notwithstanding the mines had become exhausted or unworkable, until the expiration of the term granted by the lease, although the lessee could establish his inability to reap one farthing's benefit from the mine. And, of course, the original lessee is liable on his covenants, although he may, long ago, have assigned the lease to some other person. A case has come under the writer's notice, where a person who took a lease of a colliery as trustee for persons who afterwards abandoned it and became insolvent,

[1] 45 & 46 Vict. c. 38; R. P. Statutes, 485.

was compelled to pay a minimum rent of more than 1,000*l.* a year, although twenty or thirty years had elapsed since he had any personal connection with the property. This is a matter of such a serious nature in mining leases, that it excites one's surprise how professional men residing in the neighbourhood and advising the lessee can omit to provide for it; but that such omission very frequently takes place is proved by many cases, both reported[1] and unreported.

The proviso to be inserted on the part of the lessee should be to the effect that, in case the mine should become exhausted or unworkable at a profit to the lessee at any time during the term, he should have power to determine the lease on giving six months' notice to the lessor of his desire to do so.

A proviso for re-entry and forfeiture of the lease on non-payment of rent is a usual clause in all leases, and must be submitted to in the absence of stipulation to the contrary; but the lessor's solicitor will, in most cases, extend such proviso to breach of any covenant contained in the lease. This extension cannot be enforced in the absence of agreement, and should not be agreed to by the lessee's solicitor. It is true that the Court is most reluctant to enforce a forfeiture for a breach of covenant which has caused no appreciable damage to the reversion, *e.g.*, a covenant to repair where the lessee has an unexpired term of fifty years or more. And the Court has power, under § 210 of the Common Law Procedure Act, 1859,[2] to relieve against forfeiture for non-payment of rent, and under § 14 of the Conveyancing Act, 1881,[3] to relieve against forfeiture for breach of any other covenant, except covenants against

[1] *Clifford* v. *Watts*, L. R. 5 C. P. 577, 587; *Rex* v. *Bedworth*, 8 East, 387; *Mellers* v. *Devonshire*, 16 Beav. 252; *Ridgway* v. *Sneyd*, K. 627.

[2] 15 & 16 Vict. c. 76; R. P. Statutes, 240.

[3] 44 & 45 Vict. c. 41; R. P. Statutes, 237.

assigning or underletting, and covenants in mining leases to allow the lessor to have access to or inspect books, accounts, records, weighing-machines, or other things, or to enter and inspect the mine. Relief against forfeiture on bankruptcy or execution will not be granted till after a year from the bankruptcy or execution has expired, and then only in case the lessee's interest has not been sold.[1] But this does not apply to agricultural and mining leases, and certain other leases specified in sub-sect. 3 of § 2 of the Conveyancing Act, 1892,[2] and relief is usually only granted upon payment of costs by the lessee, and, therefore, it is well to preclude the necessity for any such application, with the necessary expense and inconvenience, by insisting that the proviso for re-entry shall not extend to breaches of covenant generally.

The lessee's solicitor must see that a proper covenant by the lessor for quiet enjoyment is inserted; and in some cases the lessor ought to enter into other covenants. A lease of a house should provide for payment—either by lessor or lessee, as may be arranged—of the cost of works required to be executed by the local authority under any public or local statute.[3]

Counterpart—*Engrossment.*—When the draft lease has been perused and altered as may be necessary or advisable, it must be returned to the lessor's solicitor, and after the draft is finally approved of, he will engross it and forward it to the lessee's solicitor for examination; but, unless so expressed in the agreement (if any), the lessor cannot require a counterpart of the lease to be executed at the expense of the lessee: he may require the lessee to execute a counterpart, but it must be at his own expense, and if the agreement states that the lease is to be prepared by the lessor's solicitor, and that the

[1] 55 & 56 Vict. c. 13, § 1. [2] *Ibid.*

[3] *Cook* v. *Montagu*, L. R. 7 Q. B. 418.

lessee shall execute a counterpart thereof, and pay the costs of the lease and counterpart, then the lessee's solicitor is entitled to engross the counterpart of the lease, and forward it to the lessor's solicitor for examination; as although the latter prepares the lease as a matter of right, yet, so long as the counterpart is executed by the lessee and handed to the lessor, he gets what the agreement binds the lessee to give him. If this course is adopted, the counterpart can be engrossed from the lessee's copy of the draft lease, but the right to engross the counterpart is so seldom claimed by a lessee's solicitor that notice ought in fairness to be given to the lessor's solicitor of the intention of the lessee's solicitor to do so, on returning to him the draft lease. It should also be remembered that the scale fee under the Solicitors' Remuneration Act covers the cost of the counterpart.

Completion.—With respect to the completion of the matter, a meeting may be arranged with the lessor and lessee at the office of the solicitor for the former, or the lease and counterpart may be previously executed, and an appointment made by the solicitors for exchanging the counterpart for the lease. The latter is the more usual course.

On exchanging the lease and counterpart it should be seen that the lease is properly executed and attested, and, in the case of a house or other buildings, the keys should be handed to the lessee, unless possession has been previously given. It is also usual to pay to the lessor's solicitor the amount of his charges, a bill of which should have been previously delivered. The better plan is to request him to send his bill of costs at the same time that he forwards the engrossment of the lease, in order to enable them to be examined before the appointment for completing the matter; for if the

lessor and lessee are present at the completion, it is unpleasant to have any dispute about the charges, and it is possible that the lessee's solicitor may feel it necessary to perform his duty by objecting to some of the items in the bill, where the costs are not charged according to the scale.

Registration.—If the lease comprises property in Middlesex or Yorkshire, but does not exceed twenty-one years, the lessee being the actual occupier, or if it reserves a rackrent (*i. e.*, the full annual value of the property), it will not require registering; but if for more than twenty-one years, in cases where the occupation does not go with the lease, or when the rent is less than the full annual value (as in the case of building leases), it must be registered. A lease, conveyance, or assignment of property situate in the City of London or any of the Inns of Court does not require to be registered, these places not being within the scope of the Act establishing the registry for the county of Middlesex. By the Land Transfer Act, 1875, it is provided that no document relating to any land in Middlesex or Yorkshire which is registered under that Act need be registered in the local registries.

It is no part of the duty of the lessor's solicitor to register the lease; the registration or putting it on record is for the lessee's security, and it cannot by any means benefit or injure the lessor, whether registered or not. In this case, therefore, the lessee's solicitor will prepare a memorial of the lease, and get it signed by his client, at the same time putting an extra seal on and obtaining the execution of the lease by him. But if an intimation has been given that the lessor will be present at the time of completing the matter, a memorial of the lease can be executed by him, and this will avoid the necessity of the lease being executed by the lessee.

The memorial must be attested by two witnesses, one of whom must be an attesting witness to the execution of the lease.

STAMPS.—Where there has been an agreement in writing for a lease, such agreement should be stamped as a lease; and the lease will then only require a 6*d.* stamp. See § 75 of the Stamp Act, 1891.[1] In other cases, the lease must bear an *ad valorem* stamp, which varies according to the term and the rent. On leases for less than thirty-five years, the stamp duty is 6*d.* for every 5*l.* of rent up to 100*l.*, and afterwards 5*s.* for every additional 50*l.* For terms between thirty-five and one hundred years the duty is 3*s.* for every 5*l.* up to 100*l.*, and then 30*s.* for every additional 50*l.*; while for terms exceeding one hundred years, the duty is doubled, being 6*s.* for every 5*l.* up to 100*l.*, and 3*l.* for every 50*l.* beyond.

With regard to leases for less than a year it should be borne in mind that on leases of houses at a rent not exceeding 10*l.* the stamp duty is only 1*d.*, while on leases of furnished houses at a rent exceeding 25*l.* the duty is 2*s.* 6*d.* For these duties adhesive stamps may be used if cancelled by the person who first signs.[1]

[1] 54 & 55 Vict. c. 39.

CHAPTER VI.

COPYHOLDS.

Copyhold Tenure.—It is a surprise to many students to find that there is land in England which is neither freehold nor leasehold, which is transferable not directly from one person to another, but through the medium of a gentleman called a steward (usually the family solicitor of the lord of the manor), that such property is held by the purchaser by the tenure of a rod, a glove, a silver penny, or a straw, at the will of the lord according to the custom of the manor, and that the legal estate is usually transferred not by deed, but by a formal ceremony, which is afterwards evidenced by an entry on the court roll of the manor. A copy of this entry is delivered to the purchaser and forms his title deed. The vendor and purchaser and their solicitors meet together at the office of the steward of the manor, when the following ludicrous scene takes place:—The vendor takes in his hand a ruler, a walking-stick, or an umbrella, and repeats after the steward, "I, A. B., in consideration of, &c., surrender such and such property (naming it) to the lord of the manor to the use of C. D., in token whereof I deliver you this rod," whereupon he gravely hands to the steward the ruler or other "rod." The steward then says to the purchaser (holding out, as he speaks, the ruler), "I, E. F., in the name of the lord of the manor, do admit you, C. D., tenant of such and such property, this day surrendered to your use by A. B., in token whereof I deliver you this rod," and accordingly he

hands the ruler or other "rod" to the purchaser, who *ipso facto* becomes seised, according to the custom of the manor, of the property he has bought. The purchaser thinks this all uncommonly droll, and rather likes it than otherwise; but his eyes may presently become very considerably opened—he wants to grant a lease of the whole or a portion of the property, or to cut timber growing upon it, or to dig valuable mines which may lie under it; but if he were rash enough to do this without first obtaining the consent of the lord of the manor and paying certain fines and fees, his property would, in most cases, be absolutely forfeited to the lord, who could eject him therefrom more easily than a lessor can now eject a lessee for breach of covenant. Or, if the purchaser does not think fit to lay out his money in keeping his property in repair, but prefers to let it remain out of repair, it is also a cause of forfeiture, and the lord of the manor may seize it. The more the copyholder expends upon his property the greater the benefit to the lord: for instance, a piece of land in a manor where the fine is arbitrary may be worth 20*s.* per annum; in this case, on admittance, the lord of the manor at the utmost could demand a fine of 2*l.* Upon this land the copyholder may erect buildings worth 100*l.* per annum. Immediately after, he finds that, if he sells the property, the purchaser must pay, on admittance, to the lord of the manor a fine of 200*l.* instead of 2*l.* as before, and that, not because of any exertions or outlay on the part of the lord, but solely because of the exertions and expense of the copyholder. A fine of the same amount will be payable on the admittance of the devisee or heir of the copyholder.

Although many Acts have been passed to facilitate the extinction of this tenure, there is still much copyhold property in England, and the practice respecting it, although by no means difficult to master, is less understood than that relating to, perhaps, any other branch of

conveyancing. As there can be no doubt that for some years to come a knowledge of this practice will be necessary, the following remarks may prove useful:—

PURCHASE.—Suppose that a client has purchased an estate of copyhold tenure, it is of no consequence for the present purpose whether he has purchased by public auction or private contract; on receiving the abstract, his solicitor will perceive what manor the property is held of; and on afterwards examining the abstract of title with the copies of court roll, at the office of the vendor's solicitor, he will learn from those copies the name of the steward of the manor.

Searches.—It will be necessary to make an appointment with the steward to compare the abstract with the court roll, *i. e.*, to search the court roll, in order to discover whether the abstract contains particulars of every act which has been done respecting the title since the period of its commencement on the abstract. This duty is of equal importance to that of searching at the register office, on the purchase of an estate situate in a register county, or of inspecting the title deeds on a purchase of freehold property, as the court roll is the only means of discovering what dealings have taken place with the property. If, on searching the roll, it appears that the property has been dealt with in any manner inconsistent with the abstract of title, such inconsistency must be pointed out to the vendor's solicitor, and he should be required to amend the abstract accordingly.

PURCHASE—*Inquiries.*—After the examination of the court roll is finished, it will probably be found necessary to make inquiries of the steward respecting the customs of the manor. For instance, the abstract may show that A. B. was admitted tenant as heir of C. D. In this case it will depend on the custom of the manor whether or

not a good title be shown. Inquiry must be made of the steward what is the usual course of descent in the manor, whether according to the common law or otherwise, for in some manors the eldest son is heir, in others the youngest, following the custom of lands of borough-English tenure. Sometimes the custom carries the property to the second son, and sometimes to all the sons according to the custom of gavelkind. In Knaresbro' Forest the customary heir is the eldest unmarried daughter (if any), and if all the intestate's daughters are married, then the eldest daughter.

It is, therefore, of great importance to make these inquiries of the steward, as the title may depend upon a particular person being properly admitted; for, although the eldest son may have been admitted as heir-at-law, yet if, according to the custom of the manor, the youngest, or second, son is the heir, such admittance gives no title to the eldest son; it is simply of no force whatever.

Special inquiries are often necessary as to the custom with regard to freebench, which corresponds in copyhold tenure to dower in freehold tenure. This only arises by special custom, and varies in different manors. It should be ascertained whether the widow of a copyholder can claim freebench out of land of which the husband was seised at any time during the coverture, or only out of land of which he died seised. This freebench is a serious matter, as in most manors it entitles the wife to one-half, and in others to the whole, estate during her life. Formerly, it was necessary when an entail had been barred, to see that it had been validly done according to the custom of the manor. But since the passing of the Fines and Recoveries Act,[1] legal estates tail in copyholds can be barred only by surrender; equitable

[1] 3 & 4 Wm. 4, c. 74.

estates tail may be barred either by surrender or deed.[1] The provisions of this Act with respect to the protector apply to copyholds, and the consent of the protector may be given by deed entered on the court roll of the manor, or personally to the person taking the surrender of the tenant in tail.[2]

When an equitable tenant in tail bars the entail by deed, such deed must be entered on the court roll of the manor, but need not be enrolled in Chancery.[3]

It is not uncommon for a purchaser's solicitor to refrain from making these inquiries, under the impression that the steward would always have taken care to see that the right person was admitted; but this is by no means the case, as it must be remembered that the steward is bound to admit any person showing a colourable title; and in some few manors it is the custom to admit any person who will pay the fine and fees, the steward knowing that the mere fact of admittance gives no title whatever. The proper and safer course is to make these inquiries of the steward.

Purchase — *Requisitions.* — The preliminary inquiries having been satisfactorily disposed of, the requisitions on the title (if any) should be forwarded to the vendor's solicitor, and the proceedings thereon will be much the same as on a purchase of any other description of property.

The inaccuracy or insufficiency of descriptions of property on court rolls is so well known, that, even in the absence of any stipulation as to identity, a vendor cannot be required to identify the property contracted to be sold with the description of it on the court roll, but he must show that it has been actually held under such a description.[4] But where freehold and copyhold property

[1] § 50.
[2] §§ 51, 52.
[3] §§ 53, 54.
[4] *Long* v. *Collier*, 4 Russ. 267.

are sold together, the purchaser can require the vendor to distinguish the boundaries of the copyhold land, and to state which part is freehold and which copyhold, unless there is a stipulation to the contrary.[1] If, therefore, a solicitor is instructed by a client to sell freehold and copyhold property, which have been held together for a long period, he should insert a stipulation restricting the purchaser's right to have the boundaries of each distinguished.

While on this subject it may be useful to call attention to the importance of having all the copies of court roll (which are, in fact, the copyholder's title deeds) satisfactorily accounted for. It sometimes happens that the vendor has not all the copies of court roll in his possession, and can give no account of their absence; in such a case it will be prudent to decline to complete the matter until a satisfactory explanation has been given of the missing copies: for, if they have been deposited as security for an advance of money, it constitutes a valid equitable mortgage.[2] If the vendor cannot account for the copies of court roll not being in his possession, and the purchaser has no notice of their having been deposited, and nothing appears on the court roll in the nature of a charge on the property, and, after making every inquiry a prudent man ought to make, nothing is discovered to lead to the supposition that they have been deposited by way of security, the purchaser would probably be safe in completing, especially if the vendor has been in possession for some years, and is a responsible man, or if the earlier part only of the copies of court roll are missing. It may sometimes happen that the missing copies are with the steward, for there are few stewards who have not in their possession many copies of court roll which

[1] *Cross* v. *Lawrence*, 9 Hare, 462; *Dawson* v. *Brinkman*, 3 Mac. & G. 53; 3 De G. & S. 385.

[2] *Whitbread* v. *Jordan*, 1 Y. & C. 301.

have never been asked for, and doubtless many purchases have been completed without any inquiry, or, if any inquiry has been made, without any satisfactory explanation as to the custody of the missing copies.

The circumstances of every case of this nature must influence the advice given to the purchaser and his course of action. This is, however, a matter of much more importance than it is sometimes thought; it is wise always to keep on the safe side with respect to these copies of court roll.

Purchase—*Conveyance.*—The purchase will proceed in much the same manner as a purchase of any other description of property; but as soon as the time arrives for the preparation of the necessary assurances for carrying the contract into effect, a widely different course of practice becomes necessary. Instead of preparing a draft conveyance or assignment, a draft surrender will be necessary—a surrender being the only instrument that has any operation on the legal estate in copyholds except in special cases, such as a conveyance to a railway company or other corporation, under the Lands Clauses Consolidation Act, a conveyance by a tenant for life under the Settled Land Act, and a conveyance by trustees who have a mere power to sell, but have not been admitted. A surrender cannot contain any covenants or other stipulations in the nature of covenants, and does not imply any covenants under the Conveyancing Act, 1881, § 7. It is therefore desirable for the vendor or mortgagor also to execute a deed containing a covenant by him, "as beneficial owner," to surrender the property to the use of the purchaser or mortgagee. Where this is not done he should execute a deed containing express covenants for title, as the surrender is nothing more than an instrument whereby the vendor or mortgagor divests himself of the legal estate in the property, and the use limited by the surrender is the direction to the lord of

the manor to admit the person in whose favour the surrender is made.[1]

With respect to copyhold property settled on a marriage or otherwise, the court roll seldom shows anything more than a surrender, by A. to B. and C., and the admittance of B. and C. The trusts on which the property are to be held, and the other provisions usually contained in settlements, are generally declared by a separate document. Many stewards of manors will not allow any trusts whatever to appear in the surrender; others are not so strict.

The customs in many manors authorize the steward to charge for preparing the surrender, although the purchaser's solicitor may have prepared it himself, and this has been decided to be a reasonable custom. Knowing this, some practitioners send instructions to the steward to prepare the surrender, instead of preparing it themselves; but the better plan is for the purchaser's solicitor to prepare it himself, as, having the abstract before him, he knows more about the parties necessary to concur in the surrender than the steward. He may also think it advisable to have a new description of the property; but in this case the steward will probably insist on the old description appearing on the surrender as well as the new one, and considering the probably loose description of the property found on the court roll, there can be no doubt that, unless this is done, it would be almost impossible on a subsequent sale to identify the property.

Where freehold and copyhold property are purchased together, the freehold portion will be conveyed in the same manner as in an ordinary case, and the deed will contain a covenant to surrender the copyholds "as beneficial owner," or "as trustee," as the case may be.

[1] See Forms 97 and 98 and note, p. 387, *post*.

In this case the Stamp Act requires the apportionment of the *ad valorem* duty on the purchase-money; for instance, if freehold and copyhold property are purchased for 1000*l.*, part must be apportioned for the freehold and part for the copyhold, and the conveyance and surrender must be stamped accordingly. This apportionment may be made in any manner the purchaser thinks fit.

When the drafts of the surrender and deed of covenant are prepared, they must be fair copied and forwarded to the vendor's or mortgagor's solicitor in the usual manner; but after he has returned the draft surrender approved of, it will be advisable, unless it has been prepared by the steward of the manor, to forward it to him for his approval, as some stewards are very particular with respect to the form of surrender they adopt; and as a steward is not compelled to take a surrender in a form materially different from the one usual in the manor, some delay may be occasioned. The form of surrender, however, is similar in most manors.

Should the steward approve of the draft surrender, he will return it to the purchaser's solicitor, who will engross it and the deed of covenant, and forward them to the vendor's solicitor for examination; the latter will then make an appointment with the steward to take the surrender. This appointment should be at the steward's office, but, if it be more convenient to take it elsewhere, he will seldom insist on its being taken at his office. If the steward personally takes it elsewhere, he charges an extra fee. Where the steward lives at a distance from the place where the matter is to be completed, it is usual to write to him for a deputation to take the surrender. On giving him short particulars of the property, with the names of the vendor and purchaser, he will forward to the purchaser's or vendor's solicitor the deputation, which merely consists of a letter authorizing one of them to

take the surrender. It does not require any stamp or other formality. For this deputation the vendor must pay, as it is usually obtained for his convenience. The usual fee is one guinea.

PURCHASE—*Completion.*—An appointment having been made with the steward for taking the surrender, either at his office or elsewhere, the purchaser's solicitor will make the usual searches for judgments, &c., and inquire as to succession duty (if any) payable, and if all be satisfactory, will, either with or without his client, according to circumstances, attend the place of completion. The vendor will, either personally or by attorney (although a purchaser is not obliged to accept a surrender by attorney), surrender the property into the hands of the lord of the manor, by the acceptance of his steward, and pay all arrears of quit rent up to the time of passing the surrender, or such other time (if any) as may be fixed by the contract or conditions of sale, and also all rates, taxes, and other outgoings, in the same manner as on the completion of a conveyance of freeholds. This completes the business on the vendor's part, and it only remains for the purchaser to take admittance to the property surrendered to his use.

After the surrender has been perfected, the steward will take it with him; or, if it has been taken by deputation, it must be forwarded to him, in order that he may enter it on the court roll. It is the best plan to ask the steward whether it is his practice to keep the surrender. It is the practice to do so in nineteen manors out of twenty, but there are stewards who do not. It is not of much practical importance whether he does so or not, as he will forward to the purchaser's solicitor a copy of the entry on the court roll, which is sufficient evidence of the transaction. If an admittance has taken place on the surrender, the copy of court roll will comprise both

the surrender and admittance. It is the practice to pay the steward's fees at the time of passing the surrender, and, unless there is an express agreement to the contrary, the purchaser always pays for both the surrender and admittance, as the two together form the conveyance of the property.

Upon a sale of copyhold land by a tenant for life under the Settled Land Acts, no surrender is necessary; the vendor executes a conveyance, which is entered on the court roll, the customary fines and fees are paid, and the purchaser is admitted as if a surrender to his use had been passed.[1]

Upon a sale by trustees of a will, who have no legal estate, but only a power of sale, or a direction to sell, they convey by bargain and sale without a surrender, and the purchaser takes admittance under the will.

As to purchases by corporations, see page 143.

PURCHASE—*Admittance.*—The admittance may be taken either at the time of passing the surrender (if the surrender is taken by the steward) or at any time afterwards, and either at a Court or anywhere else. If the purchaser is not present at the completion, his solicitor can take admittance as his attorney without any power of attorney or authority from him. After the admittance, as described at p. 130, *ante*, the whole ceremony is concluded.

MORTGAGE—*Admittance.*—It is not usual in the case of a mortgage of copyhold property for the mortgagee to take admittance immediately after the surrender. He can take admittance at any time, and generally does so when he finds it necessary to take possession of the property, receive the rents, or sell under his power of sale. He is, of course, at liberty to take admittance at once, but it is seldom done, as he must re-surrender to

[1] 45 & 46 Vict. c. 38, § 20 (3).

the mortgagor on being repaid his mortgage money, and this saddles the mortgagor with the fines and fees on two admittances and a surrender, which in some manors amount to a large sum; whereas if the mortgagee does not take admittance, it is only necessary for him, on receiving his mortgage money, to give a written authority to the steward of the manor to enter satisfaction on the court roll of payment of all moneys due under the conditional surrender, on receiving which the steward enters satisfaction and the matter is at an end.

FINES.—The fine payable to the lord on admittance varies in different manors; in some it is certain—that is, a nominal sum, seldom or never varying, in others it is arbitrary; and the fine is generally payable on death as well as on alienation.

In the case of an arbitrary fine, the law allows no more to be demanded by the lord than two years' improved annual value of the property, that is, where the custom has fixed it at that amount. In some manors the custom has fixed the fine at two years on death and one year and a half on alienation. The steward will always give any information on this head. Where more than one person is admitted in joint tenancy, the fine is increased: thus, suppose four persons to be admitted as joint tenants, the first pays a full fine, *i.e.*, either two years' improved annual value or one year and a half, as the case may be; the second pays half that amount; the third, one-fourth; and the fourth, one-eighth. In the case of coparceners, however many, only one fine is payable.

Tenants in common are admitted severally, and each pays a fine, and on the death of either, his heir or devisee pays another fine, and the same on the admittance of a purchaser from one of the tenants in common; but immediately on the whole property

becoming vested again in one person, only one fine is payable.[1]

In some manors heriots become due on the death of a copyhold tenant. The custom here again varies: sometimes it is one thing and sometimes another, but generally it is the best live beast. The heriot is usually compounded for, and a sum of money paid to the lord in lieu thereof.

In the case of tenants in common, a heriot is due on the death of each; but when all the property becomes again vested in one individual, only one heriot can be demanded.

The lord's fine is not due until after admittance, but the steward may demand payment of his fees before admittance, though he seldom insists upon this right.

If the steward refuses to admit a purchaser on any insufficient ground, the purchaser's remedy is by application to the High Court of Justice for a mandamus to compel admittance.

The steward is the instrument through whom all dealings with the copyhold property must be made, and the court roll is the record of all transactions relating to the legal estate in property in the manor.

In some manors, copyholds are held for lives, renewable on payment of certain fines. In these cases the copyholds are surrendered, on renewal, to the intent that the lord may re-grant them to the copyholder for the surviving and new lives, the fines are paid, and the copyholder is re-admitted.

Purchases by Corporations.—Where copyhold property is taken by a railway company, or any municipal or other public body, under the Public Health Act, the Artizans and Labourers Dwellings Act, the Local Government Act, 1888, or the Small Holdings Act, 1892, it is

[1] *Garland* v. *Jekyll*, 2 Bing. 273; *Holloway* v. *Berkeley*, 6 B. & C. 11.

not necessary or usual to have any surrender. The property is conveyed by deed pursuant to § 95 of the Lands Clauses Consolidation Act, 1845,[1] as in the case of freeholds; and, on payment of the steward's fees, he is bound to enter the conveyance on the court roll, when it is to have the same effect as if the land had been of freehold tenure; but, until enfranchisement, the land will continue subject to the same fines, rents, heriots, and services as before. § 96 compels the purchasing company or corporation to enfranchise the copyhold land so conveyed within a certain time. § 97 applies to refractory lords of manors and to those who cannot show a good title, and § 98 provides for an apportionment of the customary rents where all the copyholder's land is not taken by the purchasing corporation.

Enfranchisement.—Under § 1 of the Copyhold Act, 1894,[2] either the lord of the manor or his tenant may compel enfranchisement of the copyhold land held by such tenant; and after such enfranchisement it will be held by the tenant in free and common socage, *i.e.*, as ordinary freehold land, except that minerals do not pass to the tenant in the absence of express stipulation,[3] and that the lord retains his rights of hunting, shooting, fishing and fowling,[4] and that the Board of Agriculture may continue subsisting conditions as to user of the land.[5]

In certain cases the lord may buy the tenant's interest instead of enfranchising.[6]

In the case of an enfranchisement of copyhold property, the title of the lord of the manor should (unless there is some stipulation to the contrary) be called for by the copyholder's solicitor, and inspected in the usual manner, in order to see if he has power to enfranchise.

[1] 8 & 9 Vict. c. 18.
[2] 57 & 58 Vict. c. 46.
[3] § 48.
[4] 57 & 58 Vict. c. 46, § 23.
[5] *Ibid.* § 13.
[6] *Ibid.* § 11.

If he be tenant for life of the manor, he may enfranchise under § 3 (2) of the Settled Land Act, 1882.[1]

In the case of an enfranchisement, where the title is clear, it is the practice for the steward to prepare the necessary deed, and to forward it to the copyholder's solicitor for perusal. The duty of the latter will be to see that the lord has power to enfranchise, that the property is correctly described, and that proper covenants for title and a covenant for production of the title deeds are inserted, an enfranchisement being, in fact, a purchase of the freehold,

The Copyhold Act, 1894, has an express provision to the effect that, notwithstanding the enfranchisement, the copyholder shall have the same right of common as he had before.[2]

It will be necessary to search for judgments, &c., against the lord of the manor, and if the manor itself is situate in a register county, to search the register for incumbrances; for a manor is within the Registry Acts, although copyhold property held of such manor is not.

In case a solicitor is concerned for a copyholder seeking to enfranchise, and a difficulty arises between him and the steward as to the proper amount of compensation for fines and fees, the better course will be to carry the transaction into effect through the Board of Agriculture, which has now superseded the Land Commissioners.[3] Or, if preferred, the enfranchisement can be carried out altogether through the Board. It is only necessary to send or write to the Board for their printed instructions and a list of forms, and these will be immediately supplied. After reading the printed instructions, no difficulty will be found in doing what is necessary to carry out the enfranchisement. It is often

[1] 45 & 46 Vict. c. 38.
[2] § 23.
[3] 52 & 53 Vict. c. 30.

cheaper for the copyholder to enfranchise through the medium of the Board, and for his solicitor to begin with them in the first place, than to open a communication with the steward of the manor, who often wishes to procure as much as possible for his lord in the shape of compensation for fines, and as much as possible for himself in the shape of compensation for fees.

CHAPTER VII.

PARTNERSHIP DEEDS AND DEEDS OF DISSOLUTION.

Part I.—Partnership Deeds.

In some cases persons join together for the purpose of carrying on a trade or business without having first defined their rights and liabilities by any written document; but as this is likely to lead to much difficulty and confusion at or before the termination of the partnership, it is always the safest course to have a proper document prepared, in order that the position of the partners and their interests in the concern may be defined.

A solicitor may be called upon to act for all the intended partners on the formation of a partnership firm, or for one or more of several partners. Or upon the admittance of a new partner to, or the retirement of a partner from, an established firm, he may be required to act either for the firm or for the new or retiring partner.

Acting for all Parties.—When concerned for all the parties intending to enter into partnership, a solicitor should take down the names and descriptions of the parties, the time at which the partnership is to commence, the duration thereof, the mode of winding up on dissolution, either by the death of a partner or otherwise, the amount of capital, and the manner in which it is to be brought in, and whether any partner is to bring in any

real estate or goods or stock as part of his capital; whether all or which of the partners are to give their whole time and attention to the business, whether any power of determining the partnership by notice is to be given, whether there is to be any power of retirement or expulsion, what is to happen in the event of the death, bankruptcy, or personal incapacity through illness (bodily or mental) of a partner, and all other matters which the parties may wish to have inserted beyond what are to be found in the usual clauses of a partnership deed. It is especially important to ascertain clearly what provision is to be made for the death of a partner; and if the surviving partners are to be entitled to purchase his share, the question will arise whether they are to pay for it out of their own pockets or out of the partnership assets, and how such payment is to be secured. If some little care is taken in obtaining accurate and full instructions, there will not be much difficulty in preparing the draft of an ordinary deed of partnership, or an agreement under hand, which is quite as effectual. In some cases, however, the intending partners have such unbounded confidence in each other that it is only with great difficulty that they are induced to consent to the insertion of the usual clauses necessary for their mutual protection. Afterwards disputes may arise; confidence will then vanish, and if their solicitor has not insisted upon the insertion of such clauses, both he and his clients may find themselves in a most unpleasant position. This happens so often that the necessity of defining precisely their respective rights cannot be too strongly impressed upon clients. When the draft has been prepared, and fair copied, it should be sent to one of the partners, with instructions for him to read it over and afterwards to hand it to the others, or they should all meet at the solicitor's office for the purpose of having the draft read over and settled. A solicitor ought

never to take the responsibility of engrossing the draft until it has been approved of by all the partners.

After the draft has been finally agreed upon, the solicitor will have it engrossed (and he will find it much the more convenient practice to have partnership deeds engrossed on parchment folded bookwise), and then make an appointment for the parties to execute the deed. This can be a matter of previous arrangement. Sometimes the deed is executed at the solicitor's office, and sometimes at the counting-house or place of business of the firm. It is usual to consult the convenience and wishes of the clients in the matter.

After the deed has been executed the partners will either keep it at their place of business or request their solicitor to keep it for them for the purpose of general reference: in the latter case, a plain copy should be made for the use of the partners, to be kept by them at their place of business.

Acting for One Partner.—When separate solicitors act for persons about to form a new partnership it is a matter of arrangement between the solicitors as to who shall prepare the deed; the most usual and equitable arrangement is for both their bills of costs to be added together and paid by the clients equally, and for them afterwards to divide the profit on the whole business; in this case it becomes quite a matter of indifference which prepares the deed, but it will be a graceful act for the youngest to offer to prepare it, besides being good practice. A young solicitor cannot begin too soon to obtain all the experience possible, for no amount of theory can compensate for a deficiency in practical knowledge, and in partnership deeds a good deal of practical knowledge is necessary.

The solicitor who prepares the draft will first forward a copy of it to the other solicitor for his perusal, and

afterwards the engrossment for examination; and when this has been done an appointment will be made at one of their offices (the convenience of their clients being considered), for all parties to meet for the purpose of executing the deed. A partnership deed is generally executed by all the parties together, although, of course, this is not necessary.

Acting for Firm.—A solicitor concerned for a firm about to admit a new partner, will probably find that the latter wishes his own solicitor to look after his interests in the transaction. In this case the firm's solicitor will, as a matter of right, prepare the deed, and forward a copy thereof to the incoming partner's solicitor for his perusal, and when all points have been settled and the former has engrossed the draft, both draft and engrossment will be sent to the latter for examination. It should be ascertained, as far as practicable, that the incoming partner is free from debt.

The appointment to execute the deed will be at either office or at the firm's place of business. In a case of this description the general rule is, that each party pays his own costs.

Acting for New Partner.—If, on the other hand, a solicitor is acting for the new partner instead of the firm, his position will be reversed, and he will on receiving the draft either forward it to his client or get him to call for the purpose of going through it with him. After the draft has been perused and settled on behalf of his client, it will be returned to the solicitor who prepared it, and when all points in dispute have been settled, he will forward the draft and engrossment for examination, and either at the same time or afterwards make an appointment for the new partner and his solicitor to attend and execute the deed.

Stamps.—A deed of partnership requires a 10*s.* stamp, but *ad valorem* duties are payable if a premium is paid.

Part II.—Deeds of Dissolution.

Dissolution inter vivos.—A dissolution of partnership may take place either on a total discontinuance of the business by the partners, or on the death of one partner, or on one partner retiring from the firm. In the case first mentioned, whether a solicitor acts for one or more partners, the course before suggested as to the preparation of the partnership deed will apply. If, on the other hand, the dissolution is only a partial one, and is confined to a partner retiring from the firm, and a solicitor is concerned for the firm, he will prepare the deed of dissolution and the assignment of the retiring partner's share, and send it to the solicitor of the retiring partner for his perusal, and afterwards the engrossment for examination and execution, as in such a case it is seldom that the parties meet on the completion of the business. After execution the two solicitors will meet together and complete the matter. In this case the solicitor of each party looks to his own client for his charges.

The solicitor for the retiring partner must refer to the deed of partnership, for the purpose of ascertaining what his client becomes entitled to on his retirement, unless it be a matter of arrangement between the parties; and it will then be his duty to peruse the draft and examine the engrossment, and perform the duties above pointed out, as being done by the retiring partner's solicitor, and he will charge his client with his costs in the matter.

After a dissolution of partnership by effluxion of time, notice, or consent, a notice of the dissolution should be inserted in the *London Gazette* and other newspapers, and express notice should be sent to all existing creditors

and customers in order that any person who has been in the habit of dealing with the firm may not be in a position, after the dissolution, to say that any subsequent dealings were entered into and credit given to the firm on the faith of the retiring member continuing to belong to the partnership. This is very important, and, when acting for a retiring partner, a solicitor should always take care that it is done.[1]

Dissolution by Death.—If the dissolution of the partnership is by death, then, for whichever party a solicitor may be concerned, he must refer to the deed of partnership (and if he is advising the representatives of a deceased partner, and does not happen to have a copy of the deed, he will obtain one from the solicitor of the surviving partner), in order to see its provisions in the event of the death of one of the partners. In some cases the deed provides that, in the event of one partner dying during the continuance of the partnership, his representatives shall assign all their interest in the business to the surviving partner, and that he shall give a bond to such representatives for the deceased partner's share of capital in the concern, and a proportionate share of profits, or a given sum in lieu of profits, for the current year. In other cases it goes further, and provides, in addition, that the surviving partner shall pay an annuity to the representatives of the deceased partner for a given period.

The usual course is for the solicitor of the surviving partners to prepare the assignment from the representatives of the deceased partner, and for their solicitor to prepare all bonds or other securities which may be provided for by the partnership deed for securing the share of capital or the annuity, or both, as the case may

[1] 53 & 54 Vict. c. 39, §§ 36, 37; *Re Fraser*, 36 S. J. 714.

be. If both the share of capital and an annuity are to be paid, it will be better to have separate bonds. The share of capital is generally payable by instalments, but the current year's share of profits, or the given sum to be paid in lieu of profits, is usually payable on the execution of the necessary assignment and bonds. With respect to the costs of these documents, the partnership deed generally provides for them; but if it should contain no provision in this respect, the practice is for the surviving partner to pay his own solicitor's charges for preparing the deed of assignment, and the costs on both sides of the preparation and execution of the necessary bonds; but the charges of the solicitor of the representatives of the deceased partner for perusing and completing the assignment by his clients are generally paid by them.

In any case the previous observations as to preparing, perusing, engrossing, and completing the matter will apply.

Persons who do not wish to incur the liabilities of partners, but are willing to risk a certain amount of capital, often lend money to traders on the terms of receiving a share of the profits instead of interest. This can be done under §§ 2 and 3 of the Partnership Act, 1890.[1] In cases of this kind it must be remembered that a contract in writing is necessary, and that in the event of the failure of the trader, the lender can recover no portion of his loan, unless it is secured by mortgage,[2] until all other creditors of the business have received twenty shillings in the pound. And the same rule applies to a person who has sold the goodwill of a business in consideration of a share of profits.[3] It is important to bear in mind that, however clearly an

[1] 53 & 54 Vict. c. 39.

[2] *Ex parte Sheil*, 4 Ch. D. 789.

[3] 53 & 54 Vict. c. 39, § 3.

agreement may express the intention of the parties to enter into the relation of lender and borrower, they will be held as against creditors of the business to have entered into that of partners, with all its attendant liabilities, if the practical effect of the agreement is to confer upon the lender the rights and privileges of a partner.[1]

A married woman who lends money forming her separate estate to her husband for use in his business, is postponed to his creditors in case of his bankruptcy.[2]

[1] *Pooley* v. *Driver*, 5 Ch. D. 458; *Syers* v. *Syers*, 1 Ap. Cas. 174; *Ex parte Delhasse*, 7 Ch. D. 511.

[2] 45 & 46 Vict. c. 75, § 3; R. P. Statutes, 359.

CHAPTER VIII.

SETTLEMENTS.

PART I.—MARRIAGE SETTLEMENTS.

INTRODUCTORY.—For practical purposes, settlements (whether of real or personal estate) are usually divided into two broad classes, viz.: marriage settlements, and voluntary settlements. This division is not strictly accurate, for although marriage is a good consideration for a settlement, executed either before the marriage or afterwards, in pursuance of an ante-nuptial agreement (except when the marriage merely takes place to give colour to a fraudulent settlement),[1] it does not form the only possible valid consideration for a settlement. A post-nuptial settlement (not in pursuance of a prior agreement) is usually voluntary. The previous marriage forms no consideration for it; but in some cases the interests dealt with and modified, are of such a nature as to afford good consideration for even a post-nuptial settlement.

REAL ESTATE—*Strict Settlement.*—Settlements executed in contemplation of marriage (and, indeed, all other settlements) are of two distinct kinds, viz.: settlements of real estate, and settlements of personalty. Real estate may be settled by two very different methods—either strictly or by way of trust for sale. The object of a strict settlement is to retain a family

[1] *Ex parte Cooper*, 59 L. T. 774.

estate as land and limit it to successive owners—usually in the eldest male line—for as long a period as the law permits, at the same time making some provision for those members of the family who take no interest in the land itself. The object of a settlement by way of trust for sale is to subject land to the more elastic provisions usually applied to settlements of personalty.

As strict settlements generally relate to estates of great value, they are, in all but the most simple cases, settled by counsel. It will, therefore, be sufficient to deal with them very briefly in these pages.

A strict settlement of real estate is often a re-settlement. That is, it is prepared either when the tenant in tail under an existing settlement attains twenty-one, or upon his subsequent marriage. In many cases the tenant for life is alive and concurs in the new settlement. Upon receiving instructions to prepare a re-settlement, it is necessary for the settlor's solicitor to peruse and carefully note the provisions of the existing settlement, and a copy of this document, together with observations as to the limitations and provisions desired in the re-settlement, will form the instructions for counsel. If the estate is subject to incumbrances, an abstract of them should accompany the instructions.

Two documents must usually be drafted, engrossed, and executed, of which the first is a disentailing deed by the existing tenant in tail, with the concurrence of the existing tenant for life or other protector of the existing settlement, if any.[1] By this deed the estate will, if practicable, be limited to such uses as the existing tenant for life and tenant in tail shall jointly appoint. By the second deed they will appoint the land to such uses as may be necessary to effect the re-settlement and to preserve to the tenant for life such of the powers

[1] See Chap. IX. p. 172, *infra*.

which he possessed under the prior settlement as may be agreed upon. For the provisions necessary or proper to be inserted in a strict settlement the reader is referred to the standard works on Conveyancing.[1] It may, however, be observed that it is no longer necessary to insert powers of distress and entry for securing jointure or other rents-charge, or annuities, or even to limit terms to secure them.[2] Nor, having regard to the provisions of the Settled Land Acts,[3] is it usually either necessary or desirable to insert powers of sale, leasing, or management. The powers conferred by these Acts should be carefully considered in order to decide whether or not they comprise all that is desired. In some rare cases it may be desirable to confer upon the new tenant for life somewhat more extensive powers. A clause authorizing the payment of purchase-money to one of several trustees with the written consent of the others is sometimes useful; but the special attention of the settlor should be called to it.

Care must be taken not to infringe the provisions of the Accumulations Act, 1892.[4]

Where an intended husband settles land of which he is seised in fee simple, his title ought to be investigated by the solicitor for the intended wife, as if he were acting for a purchaser.

On receiving the draft from counsel, it will be necessary to go carefully through it, in order to see if it is prepared in accordance with the intentions of the parties.

It should not be forgotten that, under the Infants' Settlement Act,[5] a male infant not under twenty, or a

[1] Davidson, Vol. III.; Key & Elphinstone, Vol. II.; Prideaux, Vol. II.
[2] 44 & 45 Vict. c. 41, § 44; R. P. Statutes, 297.
[3] 45 & 46 Vict. c. 38; 47 & 48 Vict. c. 18; 50 & 51 Vict. c. 30.
[4] 55 & 56 Vict. c. 58.
[5] 18 & 19 Vict. c. 43.

female infant not under seventeen years of age, may be authorized by the Chancery Division of the High Court of Justice to make a valid and binding settlement on his or her marriage. Applications under this Act are made by originating summons,[1] and must be supported by certain prescribed evidence.[2]

REAL ESTATE—*Conversion and Division.*—Where the object of the parties to a marriage settlement is to benefit the children or issue of the intended marriage more equally than is usual in the case of a strict settlement of a family estate, that object will best be attained by means of a settlement by way of trust for sale. This is by far the most desirable mode of settling small properties, and is, indeed, often applied to large estates as well. Two deeds are usual in these cases. By the first deed, the property is conveyed to trustees upon trust for sale, either at their discretion or—which is more usual—at the written request of the intended husband and wife during their joint lives, or the survivor of them during his or her life, and afterwards at the discretion of the trustees. The deed goes on to declare that the trustees shall hold the proceeds of sale upon the trusts of an indenture of even date.

Powers of leasing and management should be expressly given to the trustees in order to avoid the necessity for any application to the Court under § 7 of the Settled Land Act, 1884.[3]

By the deed of even date, the trusts of the proceeds of any sale made pursuant to the trust contained in the first deed will be declared. These trusts will usually follow, very closely, the form of such a settlement of cash as is described in a subsequent part of this chapter.[4]

[1] R. S. C. 1883, Ord. LV. r. 2 (10).
[2] Morgan's Chancery Acts, 6th ed. 97; Dan. Ch. Forms, 4th ed. 594-8.
[3] 47 & 48 Vict. c. 18.
[4] Pp. 162 *et seq.*

If the lady is represented by a separate solicitor, a fair copy of the drafts must be made, forwarded to him for perusal, and afterwards to the solicitor of the trustees, if they are separately represented, and the same with respect to any other parties to the deed for whom the settlor's solicitor may not be concerned. It will be the province of the solicitor for the intended husband to prepare the settlement (though in most cases the lady's solicitor has the right to do so at the expense of the intended husband); and if there be a settlement on the lady's part, which is often the case, it will be by a separate deed, which her solicitor will prepare and forward for perusal, and he will afterwards engross it and get it executed in the usual manner. The real estate drafts having been finally approved of, will be engrossed by the settlor's solicitor, and the engrossment and drafts forwarded to the other solicitors concerned for examination, after which he will get them executed by the necessary parties.

Registration.—If settled real estate or any part of it be in a register county, the settlement must be registered in the same manner as any other deed.

Personal Estate.—The process of settling personal property is generally very simple, and after some little experience a young solicitor will not have much difficulty in preparing such a settlement, although at all times he would be justified in resorting to counsel for assistance.

The recitals and *testatum* in a personalty settlement vary according to the nature of the property. The simplest form of settlement is one of cash; and if the draftsman has in his mind an outline of the provisions usual in such a settlement, he will be able to modify them so as to render them applicable to other kinds of personal estate.

Cash.—In a settlement of a sum of money possessed by one of the parties, the usual course is to recite that the marriage is contemplated, and that in pursuance of an agreement made on the treaty for such marriage such sum of money has been handed to the trustees. The settlement then proceeds to declare that the trustees shall invest the money, and stand possessed thereof and of the investments and the income thereof upon the trusts thereinafter declared. These trusts will be referred to presently. Sometimes the settlement contains a covenant by the husband to pay to the trustees an agreed sum of money to be held upon the trust of the settlement.

Stock.—Stock or money invested in public securities may be transferred to the trustees, either by power of attorney or personally. If by power of attorney, the power must be bespoken at the Bank of England one clear day before the day appointed for executing the settlement; and in this case the settlement and the power of attorney for transferring the stock will be executed together, and the transfer made immediately after. If, on the other hand, the transfer is made personally, it should be done immediately before the settlement is executed.

In the first case the recital will be that on the treaty for the intended marriage, it was agreed that £— stock, then standing in the name of the settlor, should be transferred into the names of the trustees and that they should hold the same upon the trusts declared by the settlements. In the other case it will be that, in pursuance of an agreement made on the treaty for the marriage, £— stock, lately standing in the settlor's name in the books of the Governor and Company of the Bank of England, has been transferred into the names of the trustees. The declaration of trust in this case will usually authorize the trustees either to allow the stock to remain in its then state of investment, or to sell it and invest the proceeds

either in similar or other stocks or otherwise, as may be desired, and the other trusts will follow in the same manner as in a cash settlement.

Shares.—Shares in railway, canal, and other companies are transferred by the ordinary transfer, and the recitals in a settlement of such property will be similar to those in a settlement of stock. The trusts upon which they are to be held are declared as in a cash settlement.

Bonds.—In cases where bonds are settled, they will be assigned by the settlement to the trustees. By virtue of the Judicature Act, 1873,[1] such an assignment passes the legal estate, and enables the trustees to give a good discharge for the money secured by the bond, if notice of the assignment be given to the person liable, *e.g.*, in this case the obligor of the bond. So that trustees of a bond debt—or of any other *chose in action*—should always give immediate notice of the settlement to the person liable to make a payment in respect of the *chose in action*. The trusts are declared in the usual way.

Promissory Notes.—Where promissory notes are settled, they will simply be indorsed to the trustees, and the fact of their having been so indorsed will be recited in the settlement. In this case the settlement proceeds to declare the trusts upon which the money secured by the promissory note is to be held; and, unless it is intended to call in the money immediately it is due, power must be given to the trustees to allow the money to remain on the security of the promissory note without being liable for any loss occasioned thereby, as it would otherwise be a breach of trust to allow the money to remain on such a security.

Life Policy.—In some cases the subject of the settlement is a policy of assurance on the life of the husband. This should be assigned to the trustees upon trust, after

[1] 36 & 37 Vict. c. 66, § 25 (6).

the money has been received to invest it, and the beneficial trusts will follow in the usual way. The husband must covenant to keep the policy on foot, and not to do anything to invalidate it, and if it is not easy to find trustees, there are offices which will constitute themselves trustees of the policies they issue for such a purpose.

It would be useful in such a settlement as this to insert a clause that, in case of the death of the wife in the lifetime of the husband, without leaving issue who have attained a vested interest in the money secured by the policy, it should be lawful for the husband, if he should think fit, to permit the policy to drop, or to sell or assign it to the company.

Under the Married Women's Property Act, 1882,[1] a man or woman can effect a policy for the expressed benefit of his or her wife or husband and children, and if no settlement is executed the Court will, on originating summons, administer the trusts of the proceeds of the policy and appoint trustees.[2] But a settlement ought always to be executed when such a policy is effected; and it should either appoint trustees or contain such provisions for their appointment as to render an application to the Court unnecessary.

Furniture.—Chattels, such as household furniture, when settled, are assigned to the trustees by the settlement and the trusts are declared in the usual way. The only way of securing this description of property against the liabilities of the husband is to settle it upon trust for the separate use of the wife. The settlement should give power to the trustees to insure the furniture from loss or damage by fire, or to sell it if the wife should so direct, or if she is not living, then at their discretion.

[1] 45 & 46 Vict. c. 75, § 11.

[2] *Re Mellor's Policy*, 6 Ch. D. 627; 7 Ch. D. 200; *Re Edwards' Policy*, 28 W. R. 72; *Re Adams' Policy*, 23 Ch. D. 525; *Re Soutar's Policy*, 26 Ch. D. 236; *Newman* v. *Belsten*, 28 Sol. J. 301; *Re Seyton*, 34 Ch. D. 511; *Re Davies' Policy*, (1892) 1 Ch. 90.

A settlement of chattels executed on marriage does not require to be registered as a bill of sale,[1] and may comprise after-acquired and substituted articles.[2]

A post-nuptial settlement of chattels requires registration.

Mortgage Debt.—If the property intended to be settled consists of money secured on mortgage, two deeds will be necessary, the first of which will be an ordinary transfer of the mortgage to the trustees in order to avoid the necessity of making the settlement part of the title to the property comprised in the mortgage. The other deed will be the settlement, and it will recite the transfer of the mortgage by deed of even date, and declare the trusts upon which the mortgage money is to be held, as in the case of a settlement of land by way of trust for sale.

Investment.—The first trust in a personalty settlement is that for investment, and it is a convenient plan to specify the modes of investment in a schedule. In the case of money on mortgage, stock, or money otherwise already invested, the trust is often either to retain existing investments or to convert and invest according to the schedule. In the case of a sum of money the trust will be simply for investment, while in the case of a policy of assurance or furniture the trust for investment will not arise until the death of the husband, or the sale of the furniture. In the absence of a trust for investment it is the duty of trustees to invest in the securities authorized by the Trustee Act, 1893,[3] as to which see page 90, *ante*.

Beneficial Trusts.—The beneficial trusts are generally as follows :—If the property is the husband's, the first life estate is given to him. If the property is the wife's,

[1] 41 & 42 Vict. c. 31, § 4.

[2] *Duncan* v. *Cashin*, L. R. 10 C. P. 554; *Courcier* v. *Bardili*, 27 S. J. 276.

[3] 52 & 53 Vict. c. 32.

the first life interest is given to her, unless the contrary is wished, which is seldom the case. After the death of the husband or wife an interest is given to the survivor. If the husband is in business, and it is wished to preserve the income for the maintenance of the family in case of bankruptcy, his life interest in the wife's property is made determinable on the bankruptcy or insolvency of the husband, and a discretionary trust for the benefit of the husband and children, or any of them, is given to the trustees during the rest of the husband's life. Whenever a life interest is given to the wife, it should be for her separate use without power of anticipation. Having regard to § 19 of the Married Women's Property Act, 1882,[1] it is not safe to omit the words "for her separate use," notwithstanding the earlier sections of the same Act.

After the death of the husband and wife, the fund will usually be held by the trustees upon trust for such of the children or issue of the marriage as the husband and wife shall jointly by deed appoint, and in default of any joint appointment as the survivor shall by deed or will appoint, and in default of such appointment upon trust for such of the children of the marriage as being sons shall attain twenty-one, or being daughters shall attain that age or marry, equally. Sometimes this trust is limited to children living at the death of the last surviving tenant for life, and in that case a provision is added admitting issue then living of a deceased child. Then follows the hotchpot clause. This clause is inserted for equalizing as much as possible the shares of the children; otherwise a child who claimed, say, one-third of the property under an appointment, would if the other two-thirds remained unappointed, share with his brothers and sisters in such other two-thirds under the

[1] 45 & 46 Vict. c. 75; R. P. Statutes, 2nd ed. 400.

gift over in default of appointment, unless there were some special stipulation excluding him in the appointment under which he claimed.

Maintenance and Advancement.—There formerly followed a provision authorizing the trustees to apply the annual income or any part thereof, after the death of the tenants for life, for the maintenance of any infant taking a vested or presumptive share of the capital; but now § 43 of the Conveyancing Act, 1881,[1] renders it unnecessary to insert such a clause. It is, however, desirable to provide that the last-mentioned section shall apply to cases in which infants, although presumptively entitled to a share of capital, are not presumptively or otherwise entitled to the income thereof.[2] A clause enabling the trustees to apply a portion of the capital of the share of any such infant for his or her advancement or benefit should also be inserted. This portion may either be limited (usually to one-half), or may be left to the discretion of the trustees. The clause for advancement should apply to all infants, whether male or female, as in settlements of small property it is a provision very likely to be needed by females.

Then follow the ultimate trusts of the property in the event of there being no children who attain vested interests. If the property be brought into settlement by the husband the ultimate trust will be for him absolutely.

If the property be the wife's, and she predecease her husband, the ultimate trusts will be as she shall by deed or will, notwithstanding coverture, appoint; and in default of appointment, to such persons as would have been her next of kin if she had died a spinster; and if she is the survivor, for her absolutely.

Miscellaneous Provisions.—If the property be brought into settlement by the wife, a provision should be inserted

[1] 44 & 45 Vict. c. 41.

[2] *Re Dickson, Hill* v. *Grant*, 29 Ch. D. 331.

enabling her to settle some part of it on the children of any future marriage, unless the property is settled, not merely on the children of the present marriage, but generally on the children of the wife.

In any event, power should be given to the wife to appoint a life interest to a future husband.

In some cases, a clause is inserted authorizing the trustees to lend a portion of the trust money to the husband, on his giving to the trustees his bond or other security for the repayment thereof. If instructions are given to insert such a clause (and it should not be inserted without authority), the deed should declare in express terms that the trustees shall not be responsible for the loss of the whole or any part of the money so lent.

Sometimes a covenant to settle after-acquired property of the wife is inserted.

It is not necessary, having regard to § 20 of the Trustee Act, 1893,[1] to insert a clause declaring the receipts of the trustees good discharges for the trust money, but it may be desirable to authorize payment of money to one trustee with the consent of the others. See also § 23 of Lord St. Leonards' Act.[2]

Nor is it necessary to insert a power to appoint new trustees, inasmuch as § 10 of the Trustee Act, 1893, confers a power of appointing new trustees, free from most of the objections to the power given by § 27 of Lord Cranworth's Act, which is now repealed. The new power applies to all trusts, unless expressly excluded by the instrument creating the trust. A short clause nominating the persons who are to exercise this statutory power may, however, be inserted. Upon an appointment of new trustees, separate trustees may be appointed for any part of the trust property subject to distinct trusts,[3] whether a general appointment of trustees is

[1] 56 & 57 Vict. c. 53. [2] 22 & 23 Vict. c. 35.
[3] Trustee Act, 1893, § 10.

being made or not. This removes the difficulty which arose under the corresponding power in the Conveyancing Act, 1881, which is now repealed.[1]

It should also be borne in mind that, under the same Act a trustee may retire without having his place filled up if he leaves two trustees still acting; and that, on an appointment of new trustees, the trust property may, in some cases, be vested by a simple declaration without conveyance.[2]

The same Act also confers powers with respect to sale[3] and compromise[4] upon trustees which will enable the powers hitherto generally inserted in settlements to be considerably modified. It may be well to provide that a single trustee may exercise the powers conferred by the Trustee Act, 1893, and may act for the purposes of the Settled Land Acts. The latter part of this provision will, of course, only be appropriate where the settled property comprises real estate. On the death of a sole surviving trustee (whether testate or intestate) after the 31st of December, 1881, the legal estate in any trust property, other than copyholds, vested in him will devolve upon his personal representatives.[5] With regard to cases of death before that date, § 5 of the Vendor and Purchaser Act, 1874,[6] and § 48 of the Land Transfer Act, 1875,[7] should be referred to.

It may be useful to mention that § 6 of the Conveyancing Act, 1882,[8] enables trustees to disclaim a power. They cannot, however, under § 52 of the Conveyancing Act, 1881,[9] *release* a power coupled with a duty.[10]

[1] *Savile* v. *Couper*, 36 Ch. D. 520; *Re Moss*, 37 Ch. D. 513.
[2] 56 & 57 Vict. c. 53, § 12.
[3] *Ibid.* §§ 13—16.
[4] *Ibid.* § 21.
[5] 44 & 45 Vict. c. 41, § 30.
[6] 37 & 38 Vict. c. 78.
[7] 38 & 39 Vict. c. 87.
[8] 45 & 46 Vict. c. 39.
[9] 44 & 45 Vict. c. 41.
[10] *Re Eyre*, W. N. (1883) 153.

In preparing a personalty settlement, it is necessary to bear in mind that there exists a rule respecting personal estate somewhat analogous to the well-known rule in *Shelley's Case*, namely, that a gift to A., followed by a gift to the executors or administrators of A., is an absolute gift to A.[1] The Judicial Trustees Act, 1896 (59 & 60 Vict. c. 35) empowers the Court to appoint judicial trustees, who may receive remuneration, and whose accounts must be regularly audited and reported upon to the Court. The same Act also empowers the Court to relieve trustees (private or judicial) from liability in respect of breaches of trust where such trustees have acted honestly and reasonably.

The provisions of the Accumulations Act, 1892,[2] must also be remembered.

Notice of Settlement.—After executing a settlement of a policy of assurance, reversionary interest, bond, or mortgage debt, or other *chose in action*, notice of the settlement should be given by the trustees to the assurance office, or to the trustees of the deed or will under which the reversionary interest was created, or to the person liable to pay the debt, as the case may be. The neglect to do this is in itself a breach of trust; and if the settlor, owing to such neglect, should effect a charge on the property, and the person in whose favour such charge was made should give notice before any notice is given by the trustees of the settlement, such trustees would be liable to make good any loss occasioned by their neglect; but if the settlor were living and a party to an action by some of the objects of the settlement for the purpose of charging the trustees, the judgment charging them would probably order the settlor to recoup the trustees. As, however,

[1] *Page* v. *Soper*, 17 Jur. 851; S.C., 22 L. J. (Ch.) 1044.

[2] 55 & 56 Vict. c. 58.

the settlor is seldom able to do this, or no proceedings may be taken against the trustees until after his death, the solicitor to trustees always makes it a point, in the case of a settlement of property of this description, to give immediate notice of the settlement to the necessary parties.

It is advisable, in every case where stock or shares not transferred to the trustees form part of the settled property, to serve a notice under R. S. C. 1883, Ord. XLVI. rr. 4—8, immediately after the settlement is executed. This may be done on the affidavit either of the trustees or of any person taking a beneficial interest under the settlement, or of their solicitor, and is a very simple process. Among the precedents in this volume will be found the forms of affidavit and notice required;[1] and on taking the affidavit and the notice to the Central Office of the High Court of Justice they will be filed, and an office copy of the affidavit and an authenticated duplicate of the notice can be obtained. Then the office copy affidavit, and duplicate notice must be served on the company, or in case of money in the funds, at the Chief Accountant's office at the Bank of England. If the names of the persons holding the stock or shares and the amount and description of the stock or shares are correctly described, this notice effectually prevents any dealing with the stock or shares without notice; and in case it should become necessary to deal with the stock or shares for the purposes of the settlement, the notice can be speedily withdrawn. For the purpose of withdrawing such notice it is only necessary for the person on whose behalf it has been given to sign and serve a written request to that effect. Any other person claiming to be interested in the stock or shares may apply to the Court by motion or petition to discharge the notice; and in

[1] See page 209, *post*.

the event of the persons in whose names the stock or shares are standing requesting the company or bank to permit the stock or shares to be transferred, or to pay a dividend thereon, the notice will not remain in force more than eight days after the request without the order of the Court or a judge.

These proceedings are substituted for the writ of *distringas* under 5 Vict. c. 5, s. 5, and their cost is of trifling amount, but the security to the fund and to all parties concerned is incalculable.

Custody of Deeds.—With respect to the custody of the deeds, the following appears to be the practice.

If the property settled be real estate, the tenant for life having the legal estate is entitled to the custody of the deeds, as it devolves upon him to defend the inheritance. If the legal estate be in trustees, they hold the deeds. If the property is leasehold, the trustee holds the deeds, and where there are more trustees than one they usually arrange among themselves which shall hold them, or agree to deposit them with some solicitor or banker. There is seldom any difficulty on the point.

A solicitor who prepares a marriage settlement has no lien on it for his costs.[1]

Part II.—Voluntary Settlements.

Under § 47 of the Bankruptcy Act, 1883,[2] any settlement executed after marriage, where no agreement has been signed previously to the marriage, will be void if the settlor becomes bankrupt within two years; and if he becomes bankrupt within ten years it will be voidable unless he can prove that, at the time of making it, he

[1] *Re Lawrance*, 42 W. R. 265.

[2] 46 & 47 Vict. c. 52.

was able to pay all his debts out of his property not comprised in the settlement. This provision does not affect property to which the settlor may have become entitled after the marriage in right of his wife. *Crabbe* v. *Moxey*[1] is worthy of an attentive perusal, as illustrating the principle upon which the law on this point would be construed. In deciding that case the Vice-Chancellor said: "It is not sufficient, in order to set aside a voluntary settlement, to show that the settlor had at the time of executing the deed some debts; neither, on the other hand, is it necessary to prove that he was absolutely solvent. The question must always be whether the effect is such as to be injurious to the creditors." In that case an inquiry was ordered as to the state of the settlor's property, and the amount of his debts at the date of the settlement.[2]

A voluntary settlement is binding on the settlor and all volunteers claiming under him; and the settlor cannot expressly revoke the trusts of such settlement unless power is therein reserved to him to do so; but if the property settled were freehold or copyhold, he could, before the 29th of June, 1893, practically supersede the settlement by conveying the property to a purchaser for valuable consideration;[3] but the Voluntary Conveyances Act, 1893,[4] now prevents such a conveyance from invalidating a *bonâ fide* voluntary settlement. As to leaseholds, it has been held that the covenant to pay rent and perform covenants is a sufficient consideration to support an otherwise voluntary settlement.[5]

It may here be mentioned that a loan by a married woman to her husband for his business or otherwise is deemed assets of the husband in case of his bankruptcy;

[1] 21 L. T. 99.

[2] See also 13 Eliz. c. 5; 27 Eliz. c. 4; 3 Dav. 675 *et seq.*

[3] See *Hall* v. *Hall*, L. R. 8 Ch. 430, 438.

[4] 56 & 57 Vict. c. 21.

[5] *Price* v. *Jenkins*, 5 Ch. D. 619; *Harris* v. *Tubb*, 42 Ch. D. 79.

and the wife cannot prove for or receive a dividend till all his creditors for value have been satisfied.[1]

STAMPS.—The stamp duty on a settlement of real estate is the same as that on a conveyance. On settlements of money and stock the duty is 5*s.* for every £100 or fractional part thereof. Stock is to be valued at the average price of the day.[2] As to policies of assurance, see §§ 104 & 118 of the Stamp Act, 1891.[3]

[1] 45 & 46 Vict. c. 75, § 3.
[2] 54 & 55 Vict. c. 39, § 6.
[3] 54 & 55 Vict. c. 39.

CHAPTER IX.

DEEDS UNDER THE FINES AND RECOVERIES ABOLITION ACT AS AMENDED BY THE CONVEYANCING ACT, 1882.

Part I.—Disentailing Deeds.

It is more than half a century since the old cumbrous modes of barring estates tail by fictitious actions known as "fines" and "common recoveries" were abolished. This reformation was effected in 1833 by the Fines and Recoveries Abolition Act,[1] which substituted new modes of assurance better adapted to the modern system of conveyancing. Under the provisions of this Act, an entail can be barred by a deed,[2] which must be enrolled in Chancery, within six months after its execution.[3] There is no particular name attached to this deed, and for want of a better it is known as a disentailing deed.

If a tenant in tail *in possession* wishes to bar his estate tail, he can do so without the concurrence of any other person. He has merely to execute a deed between himself of the one part, and A. B. of the other part, by which he grants the entailed property to A. B. and his heirs to the use of himself and his heirs; if this deed be enrolled in Chancery within six months from its execution, the entail is at an end, and the former tenant in tail becomes as much tenant in fee simple as if the property had originally been limited to him in fee simple instead of in fee tail.

[1] 3 & 4 Will. 4, c. 74; R. P. Statutes, 364 *et seq.*
[2] § 40. [3] § 41.

Now take the case of a tenant in tail not in possession, *e.g.*, where the tenant for life is living, or the trustee of an estate prior to that of the tenant in tail is in possession. In this case the tenant for life or the trustee will be called the "protector of the settlement,"[1] unless a protector has been appointed under § 32 of the Act. In all cases where there is a protector, the tenant in tail who desires completely and satisfactorily to bar the entail must procure his consent,[2] which may be given either by the disentailing deed, or by a separate instrument,[3] to be enrolled in Chancery within six months.[4] But even if the protector will not give his consent, the tenant in tail is not entirely prevented from barring the entail, although his power is limited. In such a case, only the issue of the tenant in tail himself will be barred, all subsequent remainders will remain intact. The estate so acquired by a former tenant in tail is called a base fee, the deed in such a case having the same operation as a fine had before the passing of the Act.

When a tenant for life, or other protector, concurs in the deed, it is made between three parties, viz.: tenant for life (or other protector) of the first part, tenant in tail of the second part, and A. B. (a nominee) of the third part. It will be similar in form to a disentailing deed by a tenant in tail in possession, except that the recitals will show who is the protector, and the grant of the estate will be with his consent. If it is desired to put an end to the life estate also,—as is sometimes the case,—the grant will, of course, be by both the tenant in tail and the tenant for life. Notwithstanding the provisions of the Conveyancing Act, 1881,[5] a disentailing deed will still retain the same form.

[1] 3 & 4 Will. 4, c. 74, §§ 21—31. [2] § 34.
[3] § 42. [4] § 46. [5] §§ 49—64.

This deed must be enrolled in Chancery within six calendar months after its execution, and the entail and all remainders over will then be effectually barred. If a solicitor is concerned only for the tenant in tail, and a separate solicitor is concerned for the tenant for life, or other protector, the former will forward to the other solicitor the draft of this deed for perusal, and afterwards the engrossment for examination in the usual manner.

No acknowledgment of a disentailing deed is necessary before enrolling it,[1] but if the tenant in tail is a married woman she must acknowledge it either before or after enrolment,[2] except in the case of a woman who married since the 1st of January, 1883, or who became entitled to her estate tail after that date. Such a woman will be entitled to hold her estate tail as her separate property, and to dispose of it as if she were unmarried,[3] and no acknowledgment by her is necessary. After the deed has been duly executed, it must be taken to the Central Office of the Royal Courts of Justice, where it will be enrolled, and handed back a few days after leaving it.

Stamps.—The stamp duty will be the same as on a conveyance of the same property.

Part II.—Deeds by Married Women.

The Fines and Recoveries Abolition Act, 1833, as amended by the Conveyancing Act, 1882, also provides a mode by which a married woman, whether the owner of, or having only an inchoate right to dower in, freehold property, can part with her interest therein, although such interest may not be her separate property, or belong to her for her separate use. The practice formerly was for the husband and wife to levy a fine; but under the

[1] 3 & 4 Wm. 4, c. 74, § 73. [2] § 79. [3] 45 & 46 Vict. c. 75, § 2.

above Acts the husband and wife join in the conveyance, and after they have both executed it, the latter acknowledges the deed before a judge or before a commissioner (appointed under § 81 or § 83 of the Act of 1833) to take acknowledgments of deeds by married women. Commissioners are now appointed by the President of the Queen's Bench Division of the High Court of Justice, and a Commissioner may act not only in the county for which he is appointed, but also in any other county.[1]

The acknowledgment may be made either before a Judge at Chambers, or County Court Judge, or a Commissioner authorized to take acknowledgments of deeds by married women. The acknowledgment is seldom taken before a Judge, although the fees are less than those paid to a Commissioner; for a client would rather pay the extra fees than undergo the inconvenience of attending at chambers.

A deed acknowledged before a Commissioner who is concerned professionally for any of the parties to the transaction cannot be impeached on that ground; but rules of Court have been made prohibiting persons so concerned from taking the acknowledgment. A memorandum of acknowledgment, signed by a person authorized to take such acknowledgment, is conclusive.

When the acknowledgment is taken before a Judge, the lady, accompanied by her solicitor, proceeds to the Judge's chambers, where the solicitor first attends the Judge alone, and answers any questions he may put respecting the deed; next the lady is examined in private by the Judge, and acknowledges the deed, after which the Judge signs the memorandum indorsed on the deed.

In the country the acknowledgment is taken by a

[1] *Blackmur* v. *Blackmur*, 3 Ch. D. 633.

Commissioner. The appointment with the Commissioner having been made, he will attend at the time appointed to take the acknowledgment, and sign the memorandum on the back of the deed.

The Act requires the deed to be executed by the husband before it can be acknowledged by the wife; but where it deals with the wife's estate, and the interest of the husband is only such as he takes by virtue of his marital right, and he is either a lunatic or abroad, not having been heard of for some time, and in some other cases enumerated in the Act, the Court will, on application being made for that purpose, dispense with the concurrence of the husband in the deed.[1]

This application is made by motion, supported by an affidavit of the facts.

The provisions of the Fines and Recoveries Abolition Act are extended by the Act to amend the Law of Real Property[2] to contingent and executory interests.

Until the passing of Malins' Act,[3] a married woman could not by any process dispose of a reversionary interest in personal property, unless settled upon her for her separate use. As no reason could be discovered why any difference should exist in this respect between real and personal property, the above Act was passed, in order that both those descriptions of property might be placed on the same footing. It must, however, be borne in mind that the old law still continues in force as to all instruments made before the 31st of December, 1857,[4] and that even the new law does not extend to settlements made on the marriage of the *feme covert*.[5] All deeds executed under this Act must be executed by the husband and acknowledged by the wife, in the same

[1] 3 & 4 Will. 4, c. 74, § 91. [2] 8 & 9 Vict. c. 106, § 6.
[3] 20 & 21 Vict. c. 57. [4] § 1. [5] § 4.

manner as required by the Fines and Recoveries Abolition Act, and the Conveyancing Act, 1882.

A married woman may execute a power of appointment without acknowledgment.

SEPARATE USE.—Where a married woman is seised of or entitled to freehold property for her separate use, whether for life only as tenant in tail or in fee simple, which she is not restrained from alienating, she can dispose of such property without the concurrence of her husband; and whether the husband does or does not join in the conveyance of such property, the deed does not require to be acknowledged by the wife, inasmuch as, with respect to that property, she has the same right of disposition as a *feme sole* would have of it,[1] and even though she may be restrained from anticipation during her life she may dispose of the reversion expectant on her death.[2] And under § 6 of the Vendor and Purchaser Act, 1874,[3] where any freehold or copyhold hereditament shall be vested in a married woman *as a bare trustee*, she may convey or surrender as if a *feme sole*. This, however, cannot apply to the legal estate, which must, necessarily, be vested in her and her husband jointly, in all cases where the trust estate became vested before the 1st of January, 1883, in a woman married before that date, and it has been recently held that the Married Woman's Property Act, 1882, does not enable a woman married after the 1st of January, 1883, who is a trustee with duties to perform, to convey the legal estate in land without her husband's concurrence and does not render acknowledgment unnecessary.[4]

All property, whether real or personal, belonging at

[1] *Taylor* v. *Meads*, 11 Jur. (N. S.) 166.
[2] *Cooper* v. *Macdonald*, 7 Ch. D. 288.
[3] 37 & 38 Vict. c. 78.
[4] *Re Harkness and Allsop*, (1896) 2 Ch. 358.

the time of her marriage to any woman married after the 1st of January, 1883, and all property devolving after that date upon any married woman (whether married before or after that date), will belong to her for her separate use, and may be held and disposed of by her without the intervention of a trustee, and without the concurrence of her husband, just as if she were unmarried. This revolution in the law is effected by §§ 1, 2, and 5, of the Married Women's Property Act, 1882,[1] and a married woman is now able to convey the legal as well as the equitable estate in all property to which it applies. But § 19 of the Act, which contains an important saving in favour of marriage settlements, must not be forgotten; and it should also be borne in mind that where a woman was, prior to the 1st of January, 1883, entitled to a reversion which falls into possession after that date, it is regarded as having devolved upon her at the earlier, and not the later period.[2] The same Act, supplemented by the Act of 1893, enables every married woman to enter into contracts (which, unless the contrary be shown, are to be deemed to be with intent to bind her separate estate, whether she is possessed of separate estate or not[3]), to sue and be sued alone, and to act as trustee or executor without the concurrence of her husband. It also contains provisions rendering certain loans by a wife to her husband liable to his debts, and rendering property passing under a general power of appointment exercised by a married woman liable to her debts, and rendering a married woman who has separate estate liable for the maintenance of her pauper husband. The provisions of the Married Women's Property Act, 1870 (which is repealed), as to earnings and investments by and policies

[1] 45 & 46 Vict. c. 75; R. P. Statutes, 353.
[2] *Reid* v. *Reid*, 31 Ch. D. 402.
[3] 56 & 57 Vict. c. 63, § 1.

of assurance for the benefit of married women, are re-enacted with amendments.

§ 40 of the Conveyancing Act, 1881,[1] enables a married woman to give a valid power of attorney to execute any instrument or do any act which she might herself execute or do.

[1] 44 & 45 Vict. c. 41.

CHAPTER X.

WILLS.

Introductory.—A strong, but most erroneous, impression prevails among non-professional persons that a will is a very simple document and easily prepared by almost anyone, and the consequence is that clergymen, schoolmasters, agents, and other quite incompetent persons are frequently entrusted with the preparation of an instrument that above all others requires skill and legal knowledge. The questions which arise in consequence of badly drawn wills still form no inconsiderable part of the business of the Chancery Division, and a glance through the reports is sufficient to warrant the conclusion that great expense and much bitterness would have been avoided if wills were prepared only by skilful and experienced persons.

Instructions.—On being instructed to make a will, a solicitor should take down in writing full particulars respecting the testator's property, whether in possession, reversion, remainder, or expectancy, and also the particulars of his family. After doing this, he should insert opposite each description of property the name and any necessary identification of the person to whom the testator intends to devise or bequeath it; and this should be

continued until the whole property is disposed of. The following is an outline that may prove of assistance :—

Testator	James Thompson, of 1, Cheapside, hatter.
Freehold messuage, 1, Cheapside, in occupation of testator.	To son William Thompson, in fee simple.
Stock in trade	To be valued and taken by son William at his option (if taken, to be paid for with interest by quarterly instalments in three years) : if not taken, to fall into residue.
Freehold farm, containing about 100 acres, at Twyford, Berks, let to John Jones, as yearly tenant.	To son James Thompson for life, remainder to his issue as he may appoint, in default to his children equally : in default of issue, to testator's other children in equal shares.
Consumable stores, wines and spirits.	To wife absolutely.
Furniture at No. 1, Cheapside.....	To wife for life, then to fall into residue. Power to allot specifically.
Pecuniary legacies :—	
£20 payable at once	To wife.
£500	To son William Thompson.
Annuity of £50 per annum out of farm, and another annuity of £50 per annum out of messuage at Cheapside.	To wife, payable quarterly from death—duty free.
£1,000	To daughter Sarah, to be settled on her and her children, with power of appointment.
£50	To Shopman James Tomkins, if in testator's service at death.
£10	To each executor who proves.

And so until all the specific devises and specific and pecuniary bequests the testator wishes to make are disposed of, and then wind up as follows :—

Residue	To sons William and James and daughter absolutely, as tenants in common.[1]
Executors	Son William, and Simon Jackson, of 100, Watling Street.

[1] If the daughter's share is to be settled, a note to that effect should be made.

When such a memorandum as the above has been jotted down, it should be carefully gone through with the testator in order to ascertain whether he has omitted anything which he desires to include, and also to clear up any points arising upon the memorandum as to which doubts may exist.

The testator should be reminded that, in the absence of contrary directions, legacies and annuities do not become payable until twelve months after his death; and that if he desires to give any legacies or annuities duty free he must expressly do so. The fact that a will speaks from death, and not from its own date, should be called to his attention, in view of possible future increase in the value, and change in the nature, of his property. The effect of such a change in adeeming specific legacies may be important. It is often desirable to ascertain whether the testator's property is affected by any marriage settlement, whether he has any power of appointment under any settlement or will, if so, whether he desires to exercise it, whether any part of his property to be specifically devised is mortgaged, and, if so, whether he desires the devisee to take it subject to or free from the mortgage. In the latter event, special provision must be made; in the former, Locke King's Act and the Amendment Acts will carry out the testator's intention. If the testator be in business, the question will arise what, if any, powers should be given to his executors to carry on his business, either with a view to a sale as a going concern or otherwise. If he be in partnership with other persons, his power of dealing with his share may be fettered by the partnership deed, which should, therefore, be carefully perused by his solicitor. Sometimes it is desirable to appoint special executors of the testator's business, and if he be entitled to property abroad—especially in the colonies—the plan of appointing some person resident in the country where the property

is situate as special executor of that property has much to recommend it. But the appointment of a large number of executors or trustees is not desirable. It is seldom that more than two or three will act, and in that case the others must, sooner or later, renounce and execute a disclaimer at the expense of the estate. A case came before the present writer where only two of nine appointed executors proved a will. It is usually desirable—though it is not compulsory,—to appoint the same persons executors and trustees.

Preparation of Draft.—With a sketch of particulars like that suggested above, a young solicitor will find little difficulty in drafting a will disposing of a small property in such a mode as is usually desired; and the precedents in the present volume will, in most cases, be found capable of adaptation. But if the testator's property be large, or the mode of disposition desired by him intricate, the better course will be to instruct counsel to settle the draft. In drafting a will—or indeed any legal document—the utmost care should be taken to use clear and accurate language. Should the testator be seised of copyhold property, which he intends to have sold by his trustees, care must be taken to give to the trustees only a power to sell the property, and by no means to devise it to them, as, if devised, they must take admittance to it, and pay the fine, which, if arbitrary, may amount to two years' improved annual value, and, if more than one trustee is admitted, the fine will be greatly increased. Take the case of property worth £50 a year. Then, if three trustees were acting, the fine would be two years' annual value for the first, say £100; one-half of this amount for the second, and one-fourth for the third; this would amount to £175, besides the steward's fees; whereas, if the will merely directed the trustees to sell the copyhold property, the whole of this expense would

be saved, as the persons taking the power would exercise it by deed in favour of the purchaser of the property, who thus would come in as a person claiming under the will, and take admittance accordingly, and pay the fine and fees due thereon.

With regard to charitable gifts, the provisions of the Mortmain and Charitable Uses Act, 1888,[1] as amended by the Mortmain and Charitable Uses Act, 1891,[2] must be borne in mind; and it will be well to provide that on the failure of the object of any such bequest it shall fall into the residue. Otherwise it may be applied *cy-près*.[3]

In the common case of a devise and bequest of residuary real and personal estate upon trusts for sale, payment of debts, funeral and testamentary expenses, and legacies, it will be desirable, having regard to § 21 of the Inland Revenue Act, 1888,[4] to add a direction that all legacies shall be payable primarily out of personalty. If there is any doubt whether the personalty is likely to be sufficient for payment of legacies, in addition to funeral and testamentary expenses and debts, it may, in some cases, be desirable to direct payment of such expenses and debts out of the proceeds of real estate.[5]

The Conveyancing Act, 1881, has rendered unnecessary the insertion of some of the express powers formerly given to trustees and executors. The power of maintenance may be omitted in reliance on § 43, where property is given upon trust for the testator's own children in such a manner that it will vest in them upon attaining twenty-one. Where, however, the vesting is postponed beyond that period, *e.g.*, till twenty-five, the statutory power does not apply to the interval between majority and the time of vesting. And where

[1] 51 & 52 Vict. c. 42. [2] 54 & 55 Vict. c. 73.

[3] *Re White*, (1893) 2 Ch. 41; *Re Rymer*, (1895) 1 Ch. 19; *Re Buck*, (1896) 2 Ch. 727.

[4] 51 Vict. c. 8. [5] *Re Bawden*, (1894) 1 Ch. 693.

property is given in trust for the children of other persons, the testator not being *in loco parentis* to such children, it will still be desirable to give an express power of maintenance, either by reference to the statutory power or otherwise, where the testator desires that the income should be available for their maintenance.[1] The power of advancement must always be expressly given when such a power is desired. Extensive powers of management of land to which infants are entitled are given by § 42; and the powers conferred by the Settled Land Act, 1882, are also available.

The usual power to appoint new trustees, with the ancillary provisions formerly required, may be omitted in reliance upon §§ 10 to 12 of the Trustee Act, 1893,[2] while §§ 13 to 15 confer all necessary powers upon trustees for sale. It may be desirable to provide that a single trustee may exercise the powers conferred by the Act, and to insert an express power to settle questions and apportion blended trust funds. A power to allot property specifically among legatees can only be exercised if expressly given. The Act also contains provisions which will render it safe, in most cases, to omit any clause for the protection and indemnity of trustees.

A devise of trust estates (other than copyholds) is improper, as § 30 of the Conveyancing Act, 1881, renders it inoperative.[3]

When the will has been prepared, the solicitor must make a fair copy of it, and either send it to the testator to read over, or make an appointment, and read it over to him. The first course is preferable, as the testator will more readily remember any omission that may have been made, or any alteration he may wish to make, if he reads over the draft in his own way, than he would be able to do if it were read to him.

[1] *Re Dickson*, 29 Ch. D. 331. [2] 56 & 57 Vict. c. 53.
[3] 44 & 45 Vict. c. 41, § 30; 50 & 51 Vict. c. 73, § 45.

If practicable, the will should be in numbered paragraphs, with marginal notes. This will be a great help to a layman in his first perusal of the draft.

But, after he has read it at his leisure, an interview between himself and his solicitor is most desirable if time and circumstances permit. Seldom, indeed, is it that a layman will not find in a well-drawn will some provision as to which he desires information or explanation. It should be remembered that a married woman may make a will disposing of property over which she may have a power of appointment, and of her separate property under the Married Women's Property Act, 1882, and of other property belonging to her for her separate use, but not of any other property without her husband's assent.[1]

Execution.—The draft, having been approved of by the testator, will be fair copied on brief paper, or bookwise, and signed by him in the presence of two witnesses, who will sign their names in the presence of each other, and in the presence of the testator. Neither sealing nor publication is necessary. Care must be taken that neither of the witnesses nor their wives take any benefit under the will, otherwise, although such witness will be competent to prove the due execution of the will, he or his wife will lose any benefit intended to be given to him or her by the will.

After the will has been signed and witnessed, the solicitor should seal it up and hand it to the testator, as most people like to keep their own wills; some, however, prefer leaving them with their solicitors. The best course, when the testator is a man of considerable property, is to engross two parts of the will, and let him sign them both, the solicitor keeping one part and the testator the other.

[1] *Willock* v. *Noble*, L. R. 7 H. L. 580.

CHAPTER XI.

DISCLAIMERS.

Introductory.—A disclaimer is a deed executed for the purpose of proving at all future times that a person to whom property has been devised as a trustee declines to accept the trust, or take any interest under the will; in other words, he disclaims the estate devised to him by the will. Disclaimers are principally used in cases where trustees appointed by a will refuse to act. A verbal refusal to act is a sufficient disclaimer, and where a trustee has never acted or interfered in any way, it will be considered that, by his conduct, he has disclaimed any intention of ever interfering; but, notwithstanding this, a deed is generally executed, as it is the best evidence that can possibly be obtained of the refusal to act.

Form of Deed.—This deed is very simple; it usually recites so much of the will as is necessary to show the devise to the trustee, and what property the deed is intended to act upon, and then the trustee proceeds to disclaim the estate devised, and all trusts and powers created by the will. If he is appointed executor as well as trustee he also renounces probate.

Any person, whether a trustee or not, to whom any power is given, may, by deed, disclaim the power;[1] but it may be doubted whether this provision applies to powers conferred on limited owners by the Settled Land Act, 1882.[2] Compare §§ 50 and 51 of the last-mentioned Act with § 6 of the Conveyancing Act, 1882.

[1] 45 & 46 Vict. c. 39, § 6. [2] *Ibid.* c. 38.

Trustees of Copyholds.—A disclaimer is often resorted to, and very usefully, in the case of copyhold property held of a manor in which the fines are arbitrary. If there are several trustees of a will, and they all take admittance, the fine, as previously stated, is considerably increased; whereas, if all except one disclaim, then, on the admittance of that one, a single fine only is payable; and it does not follow that the other trustees by executing the disclaimer are shut out from interfering in the trusts of the will, inasmuch as they merely disclaim the copyholds in order that the one trustee may take admittance to the property: it is true that he alone has the legal estate, but the other trustees are still necessary parties to any act done under the will, as in the execution of a power, for instance. The steward of a manor is bound to admit one trustee, where such a disclaimer has been executed, even although he knows that the others disclaimed merely to save the fine.[1] He can, however, require the disclaimer to be entered on the court rolls, and, in practice, it is generally sent to him for that purpose with instructions for the admittance.

Costs.—The disclaimer is prepared by the solicitor of the acting trustee, and paid for out of the trust estate, including the costs incurred by the disclaiming trustee in relation thereto.

Stamp.—A deed of disclaimer requires a ten shilling stamp.

Registration.—A disclaimer should also be registered, if it relates to property in Middlesex or Yorkshire.

[1] *Wellesley* v. *Withers*, 4 E. & B. 750.

CHAPTER XII.

PROBATES AND LETTERS OF ADMINISTRATION.

On receiving instructions to prove a will, or apply for letters of administration, in the case of a death after the 1st of August, 1894, a solicitor should obtain from the executor or intending administrator full particulars not only of all the personal property to which the testator or intestate was entitled at his death, but also of all his real estate, and of all real and personal property of which he was competent to dispose by appointment or otherwise (whether actually disposed of by him or not) of all *donationes mortis causâ* made by him, of all gifts *inter vivos* made by him within a year of his death, and of all similar gifts made by him at any time in which he retained any life interest or other benefit. He should also ascertain whether the testator or intestate had transferred any stock, shares, or other property into the joint names of himself and any other person, in order that such other person should become beneficially entitled thereto as survivor. He should also inquire whether any other property passed by virtue of a settlement or otherwise on the death of the testator or intestate to any other persons.

Under the Finance Act, 1894, all such property is, with certain exceptions referred to below, to be regarded as one estate for the purpose of calculating the estate duty payable on obtaining probate or letters of administration, and although, where the value of the estate exceeds £500, the executor or administrator is only

accountable for the duty on the personal property of which the testator or intestate was competent to dispose, it is necessary, so far as practicable, to obtain and give particulars of all the items which compose the aggregate estate in order to fix the rate of duty. Deductions may be made in respect of reasonable funeral expenses, incumbrances, and certain other debts.

There are certain cases in which property which passes at the death is regarded as "an estate by itself," and is not included in the "one estate" for the purpose of calculating the rate of duty. Property in which the testator never had an interest, but which passes at his death, forms an estate by itself. So does property in which he had an interest, but which passes at his death to some person other than the wife or husband, or a lineal ancestor or lineal descendant of the testator, testatrix, or intestate. In these cases the duty on such property is calculated on the value of the "estate by itself" without regard to the value of the property of which the testator, testatrix, or intestate had power to dispose.

Where the gross value of the real and personal property on which estate duty is payable (exclusive of property settled otherwise than by the will of the deceased) does not exceed £500, and where the nett value of such property does not exceed £1,000, such property forms a "small estate," and is also to be regarded as "an estate by itself" for the purpose of calculating the rate of duty.[1]

[1] In cases of death before the 2nd of August, 1894, probate duty is still payable. This duty is now regulated by § 27 of the Customs and Inland Revenue Act, 1881 (44 Vict. c. 12), which imposes a duty of 1*l.* for every 50*l.* when the estate amounts to between 100*l.* and 500*l.*; 1*l.* 5*s.* for every 50*l.* when it is between 500*l.* and 1,000*l.*; and 3*l.* per 100*l.* when it exceeds 1,000*l.*

§§ 33 to 36 of the Act of 1881 contain special provisions as to duty on estates the gross value of which is under 300*l.* The effect of § 33 is to enable the executor or administrator of such an estate to obtain probate or letters of administration through the officers of the Court (or of Inland Revenue)

The estate duty payable in cases of death after the 1st of August, 1894, is regulated by the Finance Act, 1894.[1] Subject to the special provisions relating to small estates, which are mentioned at the end of this section, and to property forming an estate by itself, the duty is to be calculated on the aggregate of the one estate, as above defined, according to the following table :—

Principal Value of Estate.				Rate of Duty.
Exceeding	£100	and not exceeding	£500	£1 per cent.
,,	500	,,	1,000	2 ,,
,,	1,000	,,	10,000	3 ,,
,,	10,000	,,	25,000	4 ,,
,,	25,000	,,	50,000	4 : 10*s.* ,,
,,	50,000	,,	75,000	5 ,,
,,	75,000	,,	100,000	5 : 10*s.* ,,
,,	100,000	,,	150,000	6 ,,
,,	150,000	,,	250,000	6 : 10*s.* ,,
,,	250,000	,,	500,000	7 ,,
,,	500,000	,,	1,000,000	7 : 10*s.* ,,
,,	1,000,000			8 ,,

The executor or administrator must pay the estate duty on so much of the estate as consists of personalty of which the testator, testatrix, or intestate was competent to dispose. Where the one estate exceeds £500 in value, he need not pay the estate duty on any other part of it. The trustees, guardians, or committees in which the other parts of the estate are vested are accountable for the estate duty and settlement estate duty thereon, and it is their duty to carry in an account and to pay the duty. All persons beneficially interested in such property

without the intervention of a solicitor, at a fixed charge of 15*s.* in addition to duty, if he prefers to do so.

The same Act also imposes duty upon certain instruments *inter vivos*, including in some cases *donationes mortis causâ*, and voluntary settlements; and this provision has been amended by the Customs and Inland Revenue Act, 1889 (52 Vict. c. 7, § 11).

[1] 57 & 58 Vict. c. 30.

are also liable for the duty thereon. The executor or administrator *may* pay this duty, as well as the duty for which he is liable, if the persons accountable for the same request him to do so.

Under § 18 of the Finance Act, 1896,[1] simple interest at £3 per cent. per annum from the death—or in some cases from the date when the first instalment of duty falls due—is payable, and is recoverable as if it were part of the duty.

The duty on personalty is payable on delivery of the Inland Revenue affidavit, or the prescribed account relating thereto, or six months after the death of the testator or intestate, whichever first happens. The duty on real estate is payable by eight yearly or sixteen half-yearly instalments.

It may sometimes happen that the executor or administrator cannot ascertain and state some of the items which make up the one estate, and if the persons accountable for the duty thereon do not carry in the proper accounts, considerable difficulty and delay may arise in calculating the rate of duty payable. In such a case he will give all the particulars within his knowledge, and state that there is other property of which he does not know the particulars.

In case all the accounts have not been carried in within two years *from the death*, he may apply to the Commissioners to determine the rate of duty for which he is accountable, and on payment of duty at that rate he will be discharged from all further claim for estate duty.

Where property is settled by the will of the testator or otherwise, a further duty at the rate of £1 per cent. on the principal value of such property, called "settlement estate duty," is payable. Under the Act of 1894

[1] 59 & 60 Vict. c. 28.

it was held that this duty on a settled legacy was payable out of residue;[1] but under § 19 of the Act of 1896 it is payable out of the settled legacy.

When estate duty (and settlement estate duty, if payable) has been paid, no probate duty is payable. Nor is anything payable in respect of account stamp duty under the Customs and Inland Revenue Act, 1881,[2] or the additional rates of succession duty imposed by the Customs and Inland Revenue Act, 1888,[3] or the estate duty imposed by the Customs and Inland Revenue Act, 1889.[4]

It also supersedes the legacy and succession duties at the rate of £1 per cent. formerly payable by children of the testator or intestate.

Small Estates.—When the gross value of the estate of the testator or intestate is less than £500, a fixed duty may be paid which satisfies all claims in respect of estate duty and settlement estate duty. This fixed duty is 30*s.* if the value is under £300, and £2 : 10*s.* if it exceeds £300 and is under £500. If the fixed duty is paid within twelve months of the death, it does not carry interest. The executor or administrator *must* include and pay the duty on real as well as personal property forming one of these small estates.

The Commissioners have power, under § 15 of the Finance Act, 1894,[5] to remit the duty on certain specific legacies for national and other public purposes; and under § 20 of the Act of 1896[6] certain heirlooms of national, scientific, or historic interest are exempt from duty so long as they remain unsold.

[1] *Gribble* v. *Webber*, (1896) 1 Ch. 914.
[2] 44 Vict. c. 12, § 38; 52 & 53 Vict. c. 7, § 11.
[3] 51 & 52 Vict. c. 8, § 21.
[4] 52 & 53 Vict. c. 7, §§ 5 and 6.
[5] 57 & 58 Vict. c. 30.
[6] 59 & 60 Vict. c. 28.

The effects of common seamen, marines, and soldiers dying in the service of her Majesty are exempt from duty.

The foregoing remarks will give an idea of some of the principal points which require attention, but it is impossible, in a work like the present, to deal with all the provisions of the Finance Acts. Solicitors must refer to the Acts themselves, and the forms of affidavit and account contained in the Schedules to the Act of 1894.

Proving a Will.—A will may be proved either at the principal registry at Somerset House or in the country at the registry of the district within which the deceased at the time of his death had a fixed place of abode.

It is necessary, in order to obtain either probate or letters of administration, to fill up the printed "Affidavit for Inland Revenue." This contains schedules showing the value of the estate.

The solicitor must also prepare the appropriate form of affidavit called "Oath for Executors (or Administrators)," upon which the grant of probate or administration is made. The original will (if one exists) is exhibited and identified by the signature of the executor in the margin.

For probate a facsimile copy of the will, which may be in ordinary round-hand, must be engrossed on parchment. The "Oath" and affidavit must then be sworn by the executors who intend to prove, or by the administrator, as the case may be. The administrator must execute a bond with two sureties. The affidavit and "Oath" may be sworn in London at the principal registry, or before a commissioner, who must attest the execution of the bond. The most convenient plan is to get the affidavit sworn and bond attested before a commissioner, so as to save the executors or administrators the inconvenience of attending at the registry.

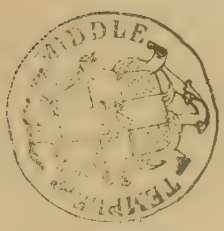
The practice at the principal registry in London is now as follows:—

When the "Oath" and affidavit for Inland Revenue has been sworn (and in the case of administrations the bond executed and stamped with 5*s.*), the affidavit for Inland Revenue is taken to the Clerks to the Controller, who check the figures and see that the amount of estate duty has been properly calculated. The duty is then paid at the office of Inland Revenue, and the affidavit for Inland Revenue stamped with the amount of duty. The solicitor takes the "Oath" and affidavit with the original will and a parchment engrossment thereof (the latter marked in pencil with the number of folios in case of probate) to the room of the Receiver of papers in the Probate Office, Somerset House. The receiver of papers looks through the papers and gives the solicitor a memorandum of the amount of fees payable, and, the fees having been paid to him, he gives to the solicitor a receipt for the papers and forwards the will and engrossment to the examiner of wills. The probate or letters of administration will be ready at the sealer's room in about three days after the papers have been left, if no impediment arises; and, when ready, will only be given up by the sealer in exchange for this receipt.

In the country the most convenient way is to send the documents by post, registered, to the district registrar, with a request for probate or letters of administration, as the case may require, and he will, by return of post, send a receipt for the documents, and either then, or a few days afterwards, an account of fees, saying that the probate or letters of administration are ready, and on receipt of the amount will be forwarded by post. The previous remarks apply to what is termed non-contentious business, that is, when no opposition is raised; but when opposition is raised the business is properly termed contentious, and com-

mences with the entry of a caveat at the registry. In both contentious and non-contentious business, numerous difficult points constantly arise, both as to practice and forms; and it then becomes necessary to refer to some standard work on probate practice.[1] In special cases, and in cases of recognized difficulty, the Registrar will settle the draft "Oath," if desired, on payment of a small fee.

[1] See Coote, Brown, or Dixon.



CHAPTER XIII.

LEGACY AND SUCCESSION DUTIES.

INTRODUCTORY.—In addition to the payment of probate duty, part of the duty cast upon executors and trustees under wills, and administrators of the estates of intestates, is to pay all legacy duties, duty on residue and succession duty (if any) in respect of the property of their testator or intestate.[1] A similar duty has also to be performed by either beneficiaries or trustees under deeds or other instruments, upon any succession to property arising under the Succession Duty Act,[2] as amended by the Customs and Inland Revenue Acts, 1888 and 1889,[3] and the Finance Act, 1894.[4]

Where legacy or succession duty is payable by persons resident in the country, the transaction may either be carried out through the medium of a London agent, or the accounts may be sent direct to Somerset House by post, instead of being sent, as formerly, through a stamp distributor.

With respect to all these matters, the proper forms of legacy and annuity receipts, and succession accounts, can be obtained in London at the office of the Commissioners of Inland Revenue, Somerset House, and in the country from any collector of Inland Revenue or at any

[1] 36 Geo. 3, c. 52; 55 Geo. 3, c. 184; 8 & 9 Vict. c. 76, § 4.
[2] 16 & 17 Vict. c. 51.
[3] 51 Vict. c. 8, §§ 21, 22; 52 Vict. c. 7, §§ 10—15.
[4] 57 & 58 Vict. c. 30.

Money Order Office. The following instructions as to these matters may prove useful:—

Legacy Duty.—Fill up separate receipts on the printed forms according to the instructions on them, for each legatee and annuitant, specifying whether the legacy is pecuniary or specific; if the latter, it is often necessary to get the value assessed by a valuer; calculate and fill in the amount of duty. Do the same with the annuity receipts. If the legacy consists of stock in the government funds, its value in money must be calculated at the price at which the stock may be officially quoted, upon or about the day on which the accounts are passed. In London take the accounts and duty to the Legacy Duty Office at Somerset House, where the clerk in the department will examine the former, and, if correct, will pass them, receive the duty, and affix the proper stamps. If the accounts or receipts require any material alteration or amendment, it may be necessary to take them away and attend another day to pass them and pay the duty.

In the country, if it is not desired to employ a London agent, the following is the cheapest and most convenient method of procedure:—

After the proper forms have been obtained, filled up and signed, they must be forwarded through the post (postage free) to the Controller of Legacy Duties, Inland Revenue, Somerset House, London. Cash for duty is not received in any case until the accounts are found correct, and the assessment has been made at Somerset House. When this has been done, a formal letter stating the amount of duty payable, with a counterfoil or remittance-sheet containing instructions for payment of the duty, is sent to the person forwarding the account. He may then pay the duty (which he should do within twenty-one days) as follows:—

(*a.*) He may, on production of the assessment letter,

pay the amount of assessed duty in cash to any collector of Inland Revenue in the country, who will mark the remittance-sheet with a receipt, and will also give an interim acknowledgment for the amount. The remittance-sheet must then be sent by post (postage free) to the Receiver-General of Inland Revenue, who will return the receipt or account duly stamped.

(*b.*) He may remit the amount by post (postage free) to the Receiver of Inland Revenue at Somerset House as follows:—

(1.) By cheque payable in London, crossed "Bank of England," and drawn in favour of "Receiver-General of Inland Revenue or Order."

(2.) Or (when the total amount of duty does not exceed 50*l.*) by post-office order, which can be obtained free of cost at any Money Order Office on production of the assessment letter *complete.*

The remittance-sheet must accompany the cheque or post-office order. The receipt of the money, if sent to Somerset House, is acknowledged by return of post, and subsequently the receipt or account is returned by post, duly stamped, to the person who sent it.

The preparing and passing of these accounts, although not strictly forming any part of conveyancing business, is generally performed, as a matter of course, by the solicitor who acts for the executors or administrators in proving the will, or procuring a grant of letters of administration of the personal estate of the testator or intestate, as the case may be. The legacy accounts affect only personalty, and a purchaser of real property is not in any way concerned with, or affected by, them, but the case is different with regard to succession duty and estate duty.

No legacy duty is payable if the whole personal estate

of the testator or intestate is of less value than 100*l.*[1] Nor is legacy duty payable if the entire estate of a person dying after the 1st of August, 1894, is of less value than 1,000*l.*, and estate duty is paid thereon pursuant to the Finance Act, 1894. And whatever may may be the value of the estate of a person dying after the 1st of August, 1894, the payment of estate duty under the Finance Act, 1894, frees it from the legacy duty at the rate of 1*l.* per cent. formerly payable. As regards persons dying before the 2nd of August, 1894, the payment of the fixed duty of 30*s.* on an estate of less value than 300*l.* frees it from all legacy duty, and the payment of duty under the Customs and Inland Revenue Act, 1881, as amended by the Customs and Inland Revenue Act, 1889, upon property of greater value than 300*l.* frees it from the 1*l.* per cent. legacy duty.

Succession Duty.—The Succession Duty Act, 1853,[2] had the effect of imposing an important duty upon solicitors acting not only for trustees and beneficiaries, but also for vendors and purchasers. The duties imposed by that Act upon "successors" to real and personal property, and the additional duties imposed by § 21 of the Customs and Inland Revenue Act, 1888,[3] and the estate duty under the Finance Act, 1894, constitute a charge upon the property in respect of which they are payable. Until recently such a charge might be enforced against any purchaser or mortgagee of the property, notwithstanding any lapse of time; but by § 12 of the Customs and Inland Revenue Act, 1889,[4] periods of limitation are imposed, after which the claim of the Crown cannot be enforced against a purchaser for value without notice. By virtue of § 8 (2) of the Finance Act, 1894,[5]

[1] 43 Vict. c. 14, § 13.
[2] 16 & 17 Vict. c. 51.
[3] 51 Vict. c. 8.
[4] 52 Vict. c. 7.
[5] 57 & 58 Vict. c. 30.

these periods of limitation also apply to the estate duty imposed by that Act, while § 9 of the last-mentioned Act protects purchasers for value without notice against liability for estate duty. But a purchaser's solicitor must still satisfy himself that all succession duties and estate duties not barred by these provisions, or by § 14 of the Act of 1889 have been paid. Where this has not been done it will be the duty of the vendor's solicitor to prepare and pass the necessary accounts; and the same duty often falls upon the solicitor acting for trustees or beneficiaries under wills and settlements. After the accounts have been prepared in duplicate, they are, in a London case, taken to the Succession Duty Office at Somerset House and settled with the clerk there. The duties are paid in another part of the building. In the country, the same procedure can be adopted as in the case of legacy duty.[1]

There are various forms of succession accounts issued by the Commissioners of Inland Revenue, all of which can be readily obtained on application, except that which is used when, for any particular reason, it is wished to anticipate the time when duty would accrue, and have such duty commuted and paid forthwith. With respect to this the commissioners have a discretion, which they only exercise upon a written statement of the circumstances, and the reason for anticipating the time of payment.

As to this see § 11 of the Customs and Inland Revenue Act, 1880,[2] and § 12 of the Finance Act, 1894.[3] Succession duty was formerly usually paid by eight consecutive half-yearly instalments, but an alternative optional mode of payment has recently been provided by § 22 of the Customs and Inland Revenue Act, 1888.[4]

In calculating the amount of succession duty in cases

[1] See p. 198, *ante*.
[2] 43 Vict. c. 14.
[3] 57 & 58 Vict. c. 30.
[4] 51 Vict. c. 8.

where estate duty under the Finance Act, 1894, is not payable, it is necessary to bear in mind the additional duty of 30*s.* per cent. imposed in certain cases by § 21 of the Act of 1888, and also the additional estate duty of 1*l.* per cent. payable under § 6 of the Customs and Inland Revenue Act, 1889.[1] It may also be mentioned that, as regards deaths prior to the 2nd of August, 1894, § 41 of the Customs and Inland Revenue Act, 1881,[2] remits the duty of 1*l.* per cent. formerly payable in cases where probate duty is paid under § 27 of that Act, and that no succession duty is payable in respect of estates of less value than 300*l.* upon which the fixed duty of 30*s.* has been paid. As regards deaths after the 1st of August, 1894, the succession duty of 1*l.* per cent. is not payable when estate duty has been paid under the Finance Act, 1894, whatever may be the value of the estate, and no succession duty at all is payable in respect of estates of less value than 1,000*l.* where the proper estate duty has been paid. Where the estate is of less value than 500*l.*, this estate duty is a fixed sum of 50*s.*, unless the value of the estate is less than 300*l.*, in which case the fixed duty is 30*s.* if the estate exceeds 100*l.* in value. Difficult questions as to the amount of duty payable in particular cases often arise. Sometimes these can be solved by reference to some treatise on the Acts. Often a discussion with an official at the office will settle the matter. In other cases it may be necessary to submit the question to the Court. Where the payment of duty devolves upon executors, administrators, or trustees, they may protect themselves by giving notice to the Commissioners of Inland Revenue under § 12 of the Customs and Inland Revenue Act, 1880,[3] or by proceeding under § 13 of the Finance Act, 1894,[4] as the case may require.

It sometimes becomes necessary to apply for the return

[1] 52 Vict. c. 7.
[2] 44 Vict. c. 12.
[3] 43 Vict. c. 14.
[4] 57 & 58 Vict. c. 30.

of overpaid duty. To obtain this, an affidavit concisely setting out the facts on which the claim is based, together with the receipt for the overpaid duty, should be presented at Somerset House. The official form of affidavit known as Form D of corrective affidavit may be used.

CHAPTER XIV.

ADMINISTRATION.

ACTING BEFORE PROBATE.—When professionally concerned for an executor, a solicitor should remember that there are many acts which his client may do before proving the will; but as this is a very wide field, and not within the scope of this book, reference should be made to some text-book on the subject.

ADMINISTRATION ACTION.—Sometimes when consulted by executors or trustees, as to whether they can safely proceed to administer the estate, a solicitor may feel it to be his duty to inform them that it is doubtful whether they ought to proceed without the assistance and protection of a Court of Equity, especially when the will is ill-drawn or of a complicated nature, where the testator has been engaged in various mercantile or other complicated transactions, or where great difficulty or responsibility is anticipated in the performance of the trusts of the will. Every case must rest on its own peculiar circumstances. It will be the solicitor's duty to consider the matter carefully, and, if he deems proper, to advise his client either to have the estate administered under the direction of the Court or to apply to the Court to decide any difficult question under R. S. C. 1883, O. LV. r. 3. Where a question arises upon the construction of a written instrument (whether declaring trusts or not) an application may be made to the Court under O. LIV. B.

It should be remembered that it is the duty of a trustee, after having accepted a trust, to perform it, if he can do so without involving himself in responsibility,

or the estate in needless expense. A testator on making his will expects his trustees and executors to administer his estate in the best and least expensive manner they can, and by no means considers that, in order to escape trouble or imaginary responsibility, they will involve the estate in expensive litigation. Before advising a client to seek the aid of a Court of Equity, his solicitor should, as a matter of precaution, take the opinion of counsel.

Trustees are bound to keep accounts, and to allow their *cestuis que trustent* to inspect them; but they are not bound to furnish copies of voluminous accounts or other documents to a person claiming to be a beneficiary unless he undertakes to pay the expense of making such copies.[1]

The portion of Lord St. Leonards' Act relating to petitions for advice is repealed by the Trustee Act, 1893.

It sometimes happens that where infants are interested under a will, an administration action is commenced by some person purporting to act as their next friend, although there may not be the slightest necessity for the interference of the Court. In such a case the Court will grant an inquiry whether the proceedings are for the benefit of the infants, and, if not, will stay them, and order the costs to be paid by the next friend.

Legacy Receipts and Releases.—In paying legacies bequeathed by a will, an executor should see that the legatee signs the proper form of legacy receipt, which can be obtained at Somerset House; and in distributing the residue, the safer course always is to take a release from the residuary legatees. Releases, however, are more generally prepared than is necessary. It is only under certain circumstances that a release may strictly be demanded.[2]

[1] *Re Bosworth*, 58 L. J. Ch. 432.

[2] *King* v. *Mullins*, 1 Drew. 308; *Warter* v. *Anderson*, 11 H. 301.

Bequests of Leaseholds.—Before advising executors to give up possession of leasehold property of their testator to a legatee under the will, their solicitor should refer carefully to §§ 26 and 28 of Lord St. Leonards' Act,[1] which define the liability of executors or administrators in respect of rents, covenants and agreements, and also in respect of rents, &c., in conveyances or rents-charge.

Rights of Widow.—It must be remembered that the widow of any person who dies intestate and without issue, after the 30th of September, 1890, is entitled to a charge on his real and personal estate for 500*l.*, in addition to her share in his residuary estate; and if the nett value of his estate is less than 500*l.* his widow takes it all.[2]

Registration.—A will of real estate, situate in a register county, should be registered; but a will relating only to leasehold estate, wherever situate, need not. And if a conveyance by a devisee of real estate be registered, it is unnecessary to register the will under which he derives title.[3]

Advertisements for Creditors.—It should be borne in mind that the modern practice of advertising for creditors and other claimants under § 29 of Lord St. Leonards' Act[1] is a great protection to an executor or administrator.[4]

Forms of advertisements will be found in this volume.[5]

[1] 22 & 23 Vict. c. 35.

[2] 53 & 54 Vict. c. 29.

[3] 37 & 38 Vict. c. 78, § 8.

[4] See *Clegg* v. *Rowland*, L. R. 3 Eq. 368; *Newton* v. *Sherry*, 1 C. P. D. 246; *Re Bracken*, 43 Ch. D. 1.

[5] Pages 207, 208.

FORMS.

ADVERTISEMENTS.

Advertisement for Creditors by Executors under Lord St. Leonards' Act.[1]

A. B., deceased.

Form 1.

Notice is hereby given, that all creditors and other persons[2] having any debt or claim upon or affecting the estate of A. B., late of &c., who died on [*date*], and whose will was proved in the Principal Probate Registry of the High Court of Justice on [*date*], by C. B., of &c. [the relict of the said A. B.], and E. F., the executrix and executor thereof, are hereby required to send in the particulars of their claims to the said executrix and executor, at [*specify residence or office of executors or solicitors*], or to us the undersigned, their solicitors, on or before [*date*], at the expiration of which time the said executrix and executor will proceed to distribute the assets of the said A. B., the testator, among the persons entitled thereto, having regard to the debts and claims only of which the said executrix and executor shall then have had notice; and the said executrix and executor will not be liable for the assets so distributed to any person of whose debt or claim they shall not have had notice at the time of such distribution.

Dated the of , 18 .

[*Signature*], Solicitors to the executrix and executor of the said A. B.

[1] In the case of a testator resident in the country, it is sufficient to advertise in the "London Gazette," and in two or three local newspapers. Advertisements in a London daily newspaper are not in all cases necessary. *Re Bracken*, 43 Ch. D. 1.

[2] See *Newton* v. *Sherry*, 1 C. P. D. 246.

Form 2. ADVERTISEMENT FOR CREDITORS BY ADMINISTRATOR UNDER LORD ST. LEONARDS' ACT.[1]

A. B., deceased.

Pursuant to the statute 22 & 23 Vict. c. 35, intituled "An Act to Amend the Law of Property and to Relieve Trustees," notice is hereby given, that all creditors and other persons having any claims against or upon the estate of A. B., late of &c., deceased (who died intestate on the [*date*], and of whose personal estate and effects letters of administration were granted by the District Probate Registry at X., of Her Majesty's High Court of Justice, on the [*date*], to C. B. [the natural and lawful brother, and] one of the next of kin of the said intestate), are required to send particulars thereof in writing to the administrator, at my office, R. Street, X., in the said county, on or before the [*date*], after which day the administrator will proceed to distribute the assets of the said A. B., having regard only to the claims of which he shall have had notice.

Dated, &c.

[*Signature*], Solicitor to the administrator of the said A. B.

[1] Compare the form given 29 S. J. 741.

AFFIDAVITS.

Form 3.

Affidavit to accompany Notice in lieu of Distringas on Stock.[1]

In the matter of [*state will or settlement*]
and
In the matter of the Act of Parliament,
5 Vict. c. 5.

I, A. B., of &c. [*or*, X. Y., &c.],[2] make oath and say that, according to the best of my knowledge, information, and belief, I am [*or, if the affidavit is made by A. B.'s solicitor*, A. B., of &c., —— is] beneficially interested in the stock comprised in the [settlement or will] above mentioned, which stock, according to the best of my knowledge and belief, now consists of the stock specified in the notice hereto annexed.

Sworn, &c.

This affidavit is filed on behalf of A. B., whose address is, &c.

Form 4.

Affidavit on Registration of Bill of Sale given by way of Security for Money.

In the High Court of Justice,
Queen's Bench Division.

I, A. B., of, &c., make oath and say as follows:—

1. The document hereto annexed and marked "A" is a true copy of a bill of sale, and of every schedule or inventory thereto annexed or therein referred to, and of every attestation of the execution thereof, as made and given and executed by C. D. of, &c.

2. The said bill of sale was made and given by the said C. D. on [*date*].

3. I was present and saw the said C. D. duly execute the said bill of sale on [*date*], and I duly attested his execution thereof.

[1] See R. S. C. 1883, Ord. XLVI. rr. 3—11 inclusive.

[2] The affidavit may be made by the party himself or his solicitor. For form of notice to company, see p. 494, *infra*.

Form 4.

4. THE said C. D. resides at, &c., and is a [*occupation*].

5. THE name A. B., subscribed to the said bill of sale as that of the witness attesting the due execution thereof, is in my own handwriting.

6. I AM a [*occupation*], and reside at, &c.

Sworn at, &c.

Form 5. AFFIDAVIT OF DUE EXECUTION OF BILL OF SALE NOT GIVEN BY WAY OF SECURITY FOR MONEY.

In the High Court of Justice,
Queen's Bench Division.

I, A. B., of, &c., a solicitor of the Supreme Court, make oath and say as follows:—

1. THE document hereto annexed and marked A is a true copy of a bill of sale and of every schedule or inventory thereto annexed or therein referred to, and of every attestation of the execution thereof, as made and given and executed by C. D.

2. THE said bill of sale was made and given by the said C. D. on [*date*].

3. I WAS present and saw the said C. D. duly execute the same on [*date*].

4. THE said C. D. resides at, &c., and is a [*occupation*].

5. The name, A. B., subscribed as the attesting witness thereto, is in my own handwriting.

6. I AM a solicitor of the Supreme Court.

7. BEFORE the execution of the said bill of sale by the said C. D., I fully explained to him the nature and effect thereof.

Sworn at, &c., on [*date*].

Form 6. AFFIDAVIT OF DUE EXECUTION OF BILL OF SALE GIVEN BY SHERIFF.

I, A. B., of, &c., a solicitor of the Supreme Court, make oath and say as follows:—

1. THE document hereto annexed is a true copy of a bill of sale and of every schedule or inventory thereto annexed or therein referred to, and of every attestation of the execution thereof.

Form 6.

2. The said bill of sale was given on [*date*] by C. D., the sheriff of the county of X. therein named [*or* by E. F., who was then one of the deputies of C. D., the sheriff of the county of X.], under and in execution of a writ of *fi. fa.* issued out of the —— Division of the High Court of Justice against G. H., the person named in such bill of sale.

3. The said bill of sale was duly executed in my presence, and was duly attested by me.

4. The said C. D. resides at, &c., and is a [*occupation*].

5. The signature, A. B., subscribed as the attesting witness to the said bill of sale is in my own handwriting, and I reside at, &c., and am a solicitor of the Supreme Court.

Sworn, &c.

Form 7.

Affidavit on Re-registration of a Bill of Sale.

I, A. B., of, &c., swear that a bill of sale dated, &c., and made between [*insert the names, &c., of the parties to the bill of sale as in the original bill of sale*] and which said bill of sale [*or*, and a copy of which said bill of sale] was registered on the [*date*] is still a subsisting security.

Sworn, &c.

Form 8.

Affidavit verifying Consent to Order for entering Satisfaction of Bill of Sale.

I, A. B., of, &c., a solicitor of the Supreme Court, make oath and say as follows :—

I was present on the [*date*] and saw E. F., of, &c. (who at the time the bill of sale hereinafter mentioned was given resided at, &c., and was [*occupation*]), sign the consent hereto annexed to an order that a memorandum of satisfaction be written upon the registered copy of a bill of sale dated, &c., and made between C. D. of the one part and E. F. of the other part, and registered on the [*date*], the debt for which such bill of sale was given having been satisfied or discharged.

Sworn, &c.

AGREEMENTS.[1]

Form 9. AGREEMENT BETWEEN A MANUFACTURER AND HIS SON AS TO SERVICES, THE SON RECEIVING A SALARY AND PERCENTAGE OF PROFITS, BUT NOT BEING A PARTNER.

Parties. 1. AN AGREEMENT made the [*date*] between A. B., of, &c., worsted manufacturer, of the one part, and C. B., of, &c., worsted manufacturer, of the other part.

Term. 2. THE said C. B. shall for the term of five years from the [*date*] act as assistant to and serve the said A. B. in the worsted business of the said A. B., with the powers, and upon the terms hereinafter mentioned.

Place of business. 3. THE said business (hereinafter called "the business") shall be carried on at X. Mill, near, &c., and at such other place or places as the said A. B. shall think fit.

Capital. 4. THE amount of capital to be employed in the business shall be fixed by the said A. B. in his uncontrolled discretion.

Duties of son. 5. SUBJECT to the other provisions hereof, the said C. B. shall have the management of the [spinning, preparing, and wool-combing] departments of the business, and in addition thereto he shall, when required by the said A. B., assist in any other department or departments of the business, but he shall not, without the consent of the said A. B., dismiss any person employed in the business [who receives a wage exceeding 10*s.* per week] or increase the number of persons so employed, or increase the wages or salaries of any such persons, or make any change in the machinery employed in the business. The amount of goods to be manufactured shall from time to time be determined by the said A. B. in his uncontrolled discretion.

Restrictions on son. 6. THE said C. B. shall not without the consent of the said A. B. interfere in any way in the management of the financial department of the business or in the accounts thereof, and

[1] Precedents of documents which, although in form agreements, take effect as leases, will be found under the head of "Leases and Tenancy Agreements," *post*, p. 427.

shall only buy or sell raw material or manufactured goods when required so to do under the control and direction of the said A. B.

Son to obey.

7. At all times during the said term the said C. B. shall diligently and faithfully employ his whole time, attention, and ability in and about the business and conform to such orders, instructions, and directions as he may receive from the said A. B.; and in all cases where he shall receive no special orders, instructions, or directions, shall act in such manner as shall be to the greatest advantage of the said A. B., and shall be just and faithful to the said A. B. in all dealings and transactions in or about the business, and shall render a just and faithful account of all matters relating to the business whenever the same shall be required, and shall at the request of the said A. B. give full information with respect to the business and process of manufacture or anything relating thereto, and shall also inform him of all letters, accounts, writings, and things in any way concerning the business and within the knowledge of the said C. B., and shall not, either alone or in partnership with or as manager or assistant for any other person or corporation, or otherwise howsoever, either directly or indirectly, engage, or be concerned, or interested in any other trade or business, and shall not, without the consent of the said A. B., divulge any trusts, secrets, or dealings relating to the business.

Salary.

8. During the continuance of this agreement the said C. B. shall receive from the said A. B. the fixed salary of £100 a year, payable half-yearly, and shall also receive £10 per cent. on the nett annual profits of the business payable at the end of one calendar month after the end of the year in respect of which the same shall have arisen.

Death of son.

9. If the said C. B. shall die during the said term, his executors or administrators shall be entitled to receive from the said A. B. a proportionate part of his salary and share of profits for the then current year up to the day of his death, such salary to be payable immediately after the death of the said C. B., and such share of the profits to be payable at the end of one calendar month after the end of the then current year.

Power to determine.

10. If the said A. B. shall desire that the said C. B. shall cease to act as such assistant as aforesaid before the said term

Form 9.

shall expire, and shall serve on him a notice to that effect, then at the expiration of three calendar months from the time of such service, or at any later time to be specified in such notice, the said C. B. shall retire and cease to act as such assistant as aforesaid, and the said A. B. shall pay to the said C. B. such salary and profits as his executors or administrators would have been entitled to if he had died on the day of such retirement.

Power to dismiss.

11. If the said C. B. shall break any of his agreements herein contained, or shall, whether from illness or any other cause, without the consent of the said A. B., absent himself from the business for more than fourteen days in any year, or for more than seven days at any one time, the said A. B. may dismiss the said C. B. from his employment as such assistant as aforesaid, and in such case the said A. B. shall be entitled to the proportionate part of his fixed salary down to the time of his dismissal, to be paid immediately after such dismissal, but not to any share of profits for the then current year, or to any other compensation whatsoever.

How profits to be ascertained.

12. In ascertaining the nett profits of the business interest at the rate of £5 per cent. per annum on the capital employed therein shall be deducted from the gross profits of the business, and a proper allowance shall also be made for the rent of any mills, warehouses, land, or buildings employed or occupied for the purposes of the business, for the expenses of all repairs, additions, and alterations of or to the same, and for all taxes, rates, assessments, payments for insurance against loss or damage by fire, and other outgoings in respect of the same, and for all expenses incurred in or about the business, including salaries of clerks, workmen, and others, and for all moneys which shall become payable on account of the business, including the fixed salary of every assistant (but not his share of profits), and for all loss and damages which shall happen in relation thereto.

Accounts to be kept.

13. Proper books of account, which shall be constantly posted up, shall be kept at the office of the said A. B., in which shall be entered all the dealings and transactions of the business. On the 26th of December, or on such other day as shall be agreed upon between the parties, in every year during this agreement, the said books shall be balanced by or under the direction of the said A. B., without any

Form 9.

interference on the part of the said C. B., his executors or administrators, and a copy of the general balance-sheet and a statement of the nett profits of the business during the preceding year, signed by the said A. B., shall be delivered to the said C. B., his executors or administrators, within one calendar month from the taking of the said accounts, and shall be final and conclusively binding on him or them, subject to the right of the said C. B., his executors or administrators, within three calendar months after such delivery, by notice to require the said A. B. to verify such general balance-sheet and statement of profits by a statutory declaration.

Notices.

14. Every notice to be given in pursuance hereof shall be in writing, and shall be served on the said A. B. or C. B., either by delivery to him personally, or by leaving the same at his usual or last known place of abode in England, or by sending the same through the post addressed to him at the place at which the business shall be carried on.

No partnership.

15. Nothing herein contained shall make the said C. B. a partner in the business, or give him any of the powers or rights of a partner, or render him liable to third persons for any debts or liabilities incurred in relation thereto.

Arbitration.

16. Whenever any doubt, difference, or dispute shall arise between the parties hereto, or between one of them and the executors or administrators of the other, or between their respective executors or administrators touching this agreement or the construction hereof, or any clause herein contained, or anything relating to the business or the affairs thereof, or the rights, duties, or liabilities of any party in connection therewith, the matter in difference shall be referred to two arbitrators, or their umpire, pursuant to the Arbitration Act, 1889.

As witness, &c.

Form 10.

Agreement appointing Consulting Engineer of Colliery.

Parties.

1. An Agreement made, &c., between A. B., of, &c., of the one part, and C. D., of, &c., of the other part:—

Appointment.

2. The said A. B. hereby appoints the said C. D. to be consulting engineer of the X. colliery at Y. aforesaid.

Form 10.

Term.

3. THE said C. D. shall act as such consulting engineer as aforesaid from the [*date*] until [*date*].

Residence.

4. THE said C. D., during the continuance of this agreement, shall reside at or near Y., and shall spend on an average at least three working days in each week at the said colliery.

Duties generally.

5. THE said C. D. shall devote the whole of such three working days in each week towards learning the workings, and advising to the best of his ability as to the safe and efficient working and development of the said colliery, including any mines or workings of ironstone or ore, brick, fire or other clays, or other minerals, and towards the general business and trade of the colliery [and fire-clay works], including advising as to the best and cheapest methods of purchasing materials, tools, and plant, and as to the prices to be charged for coals and bricks, giving his best attention to the duties undertaken by him by this agreement.

Specific duties.

6. THE said C. D. shall once at least in every month thoroughly and carefully inspect the said colliery, mines, and workings to the utmost of his skill and knowledge, and during or immediately after every such inspection shall give such directions and instructions to the resident manager as he shall consider necessary or desirable for the thorough and efficient working and development of the said colliery, in conformity with the provisions of the Coal Mines Regulation Act, 1887, or any statutory modifications thereof, or any substituted enactments which may from time to time be in force, and with the special rules of the colliery, established pursuant to any statute; and shall also, within seven days after every such inspection, furnish to the said A. B., or as he shall direct, a detailed report in writing of the result of such inspection and of the directions and instructions then given by him to the resident manager as aforesaid, together with such additional remarks, recommendations and advice as shall be necessary or desirable with reference as well to the further development as to the actual working of the said colliery, mines, and minerals; and he shall answer all such questions and give all such explanations relating to such inspection and report as the said A. B. shall require; and in particular the said reports of the said C. D. shall give details as to the condition of the colliery as regards gas,

water, and the general safety of the mine, and as to its capabilities with regard to the daily output. **Form 10.**

Duties as to plans.

7. It shall also be the duty of the said C. D., once at least in every three calendar months, to see that the manager of the mine duly and accurately plots, on a draft plan to be kept at the office of the colliery, the directions and nature of the workings then existing and intended to be carried on, and for such purpose to make an accurate survey of the underground workings. The said C. D. shall furnish to the said A. B., free of charge, all tracings of plans made by the said C. D. which the said A. B. shall from time to time require.

Salary.

8. The said A. B. shall pay to the said C. D. the annual salary of £——, by equal quarterly payments of £—— on the usual quarter days in every year. The said C. D. is not to be entitled to any travelling expenses to or from the colliery.

Restrictions.

9. Nothing herein contained shall authorize the said C. D. to give any order for the execution or erection of any works, buildings, or machinery, or other outlay, without the consent in writing of the said A. B., unless such shall be necessary to comply with the Coal Mines Regulation Act, or such further enactment as aforesaid.

Power to determine.

10. This agreement may be terminated at any time by either party giving to or leaving at the last known place of residence in England of the other three calendar months' previous notice in writing of his intention to terminate the same, or by either party paying to the other the amount of three months' salary in lieu of such notice.

As witness, &c.

Agreement appointing Certificated Resident Manager of a Colliery. **Form 11.**

Parties.

1. An Agreement made, &c., between A. B., of, &c. (hereinafter called "the employer"), of the one part, and C. D., of, &c. (hereinafter called "the manager"), of the other part:—

Term.

2. The manager is hereby nominated and shall be employed by the said employer, and shall act as resident certified manager of the X. collieries, at Y. aforesaid, from

Form 11.

the [*date*], until this agreement shall be determined as hereinafter mentioned.

Duties generally.

3. The manager shall during the continuance of this agreement take the entire management and responsibility of the working of the aforesaid colliery, including all mines and workings of coal, ironstone and other minerals, together with all machinery thereon, [but shall not interfere in any respect with the mercantile business thereof.]

Duties specifically.

4. It shall also be the duty of the manager to attend the consulting engineer on his visits, and also once in every three calendar months accurately to plot upon a draft plan (to be kept at the office of the colliery as part of the property of the employer) the directions and nature of the workings then existing and intended to be carried on, and to furnish to the employer free of charge all tracings that he may require of any plans which the manager shall from time to time make or procure to be made or possess of the said colliery and workings, or of any buildings or machinery in connection therewith.

Duties as to plant, &c.

5. All the materials, plant, machinery, live and dead stock, required for the working of the works, or which shall be used in or about the same, shall be provided by the employer; but the manager shall have the entire charge of all such materials, plant, machinery, live and dead stock, and shall take proper care of, and account for, everything entrusted to his charge, and shall, at the termination of this agreement, deliver to the employer, or to such person as he shall direct, all materials, plant, machinery, live and dead stock, drawings, plans, accounts, papers and other documents for which the manager shall then in due course of business be accountable.

Duties as to sale.

[6. The manager shall not sell or deliver any [coals] or other articles upon credit to any person whom the employer [or some person authorized by him] shall in writing have forbidden him to give credit to.]

Buildings and machinery.

7. The manager shall not, without the special authority in writing of the employer [or some person authorized by him], erect any buildings or machinery, or otherwise incur outlay of a permanent character upon the works, and no materials, plant, machinery, live or dead stock of any description shall be ordered or purchased by the manager without such authority as aforesaid, nor shall the manager in any way

pledge the credit of the employer without the written authority of the employer [or of some person duly authorized as aforesaid].

Employment of workmen.

8. The manager shall from time to time engage, employ, and discharge all such [*here specify the principal classes of workmen*] and other workmen (not exceeding the number for the time being prescribed by the employer) as he may think necessary for the proper working of the works, and shall, during the continuance of this agreement, keep a perfect supervision over all of them: But he shall not, without the consent of the employer [or some person so authorized as aforesaid], engage or discharge any person who shall require or be receiving a higher remuneration than [twenty shillings] per week.

Residence.

9. The manager shall, during the continuance of this agreement, provide himself with a residence at Z. aforesaid at his own expense [*or* be entitled to reside rent free in the usual manager's house at X. collieries aforesaid, and shall be supplied by the employer with gas and fuel free of charge].

Manager to obey employer.

10. The manager shall, during the continuance of this agreement, diligently and faithfully observe and carry out all such instructions as he has already received and shall receive from his employer [or any person so authorized as aforesaid], particularly in reference to the price of coal and other articles or materials produced [*or* made] at the works, and the credit, if any, to be given to customers, and in the absence of special orders, directions, or instructions, shall sell such coal and materials at the current market prices, without discount or deduction [and shall take all orders subject to a stipulation reserving to the employer the right of declining to execute such orders in case he shall not be satisfied with the credit of the customer, or the quantity of goods ordered, or the time over which the order is to extend or within which it is to be executed], and shall keep the employer, or any person authorized by him in that behalf, fully informed of the state and condition of the said mine, and shall keep a report book showing such state and condition, and shall faithfully, honestly, and diligently perform all the duties usually required of a resident certificated manager of a colliery, whether under the Coal Mines Regulation Act, 1887, or otherwise, to the utmost of his skill and

Form 11.

knowledge, and shall keep or cause to be kept all such books of account, registers, plans, and records of workings and other documents as shall be necessary for the proper and lawful working of the said colliery, and shall duly and punctually make all such returns relating thereto as are or shall be required by the said Act or any modification thereof or substituted enactments, which may from time to time be in force, and shall generally work and manage the said colliery with a due regard to the rights of adjoining owners, and in such manner as shall be consistent with the provisions of the said Act, or such modification or substituted enactment as aforesaid, and of the special rules of the said colliery; and subject to such rights and provisions shall work and manage the same in such manner as shall render the same as productive as possible and best promote the interests of the employer, and shall not do or permit to be done upon the said colliery anything in contravention of any provision of the said Act or such enactment as aforesaid applicable to the said colliery, nor omit to do anything which it may be his duty to do as such certificated manager as aforesaid, in conformity with such Act or enactment, and shall employ himself exclusively for the benefit of the employer at the said colliery.

Salary.

11. [*Insert* § 15 *from Form* 12, *p.* 222, *post.*]

Fines, &c.

12. The manager shall bear the expense of all fines, costs, and charges to which he or the said employer shall be put in the course of any proceedings under the said Act, or such enactment as aforesaid, through or by reason of any negligence or wilful default of the manager.

Power to determine.

13. [*Same as No.* 10, *in Form* 10, *p.* 217, *ante*, *adding* and if the certificate of the manager shall be cancelled or suspended, this agreement shall thereupon *ipso facto* and without notice or payment of salary in lieu of notice, immediately determine.]

As witness, &c.

Form 12. Agreement appointing Resident Manager of Fireclay Works.

Parties.

1. An Agreement made the [*date*] between A. B., of &c. (hereinafter called "the employer") of the one part, and

C. D., of &c. (hereinafter called "the manager") of the other part. **Form 12.**

2. THE manager shall be employed to act as the resident manager of [the X. fireclay works situate at Z. aforesaid] (hereinafter called "the works") for one year certain from the date hereof, and thenceforth until this agreement shall be determined as hereinafter mentioned. Period of service.

3. THE manager shall, during the continuance of this agreement, take the management and responsibility of the working of the works, together with all machinery thereon, but shall not interfere with the financial business thereof, except as hereinafter specially provided. Duties generally.

[*Insert Clauses* 5, 6, 7, 8 *and* 9, *from Form* 11, *p.* 218, *ante, substituting* "*clay, bricks and pipes*," *for* "*coal.*"]

[*Insert also Clause* 10 *from Form* 11, *down to* "within which it is to be executed," *and proceed as follows*]:—and shall, in the absence of special orders, directions, or instructions, honestly and diligently perform all the duties usually required of a manager of fireclay works to the utmost of his skill and knowledge, and shall work and manage the same in such manner as shall render the same as profitable as possible and best promote the interests of the employer, and shall at all times give to the person or persons having the charge of the financial business of the works any information relating to the working thereof which may be required of him.

10. IT shall be the duty of the manager to travel to and from such places and so often as the employer [or person authorized as aforesaid] shall require, for the purpose of obtaining orders and particulars of contracts for the supply and sale of materials and raw and manufactured articles from the works; but the employer shall provide the reasonable expenses of railway and other conveyance for the manager for such journeys. Travelling.

11. THE manager shall employ himself exclusively for the benefit of the employer, and devote his whole time to his duties, and shall not, during his employment by the employer, directly or indirectly sell or offer for sale or solicit or take orders for, any materials or articles, raw or manufactured, on behalf of any person or company other than the employer. Whole time to be given.

12. THE manager shall not, without express authority Payments.

Form 12.

from the employer, compound or purport to compound for any debt, or receive any payment whatsoever from any customer, but all payments are to be made directly to the order of the employer, and, so far as may be, by cheque or post-office order payable at [*specify bank or post-office*].

Commissions.

13. The manager shall under no circumstances whatever directly or indirectly receive or accept for his own benefit any commission, rebate, discount, gratuity, emolument, or profit from any customer of the employer.

Other officials.

[14. The manager shall in no way interfere with any manager or other official or servant engaged at any adjoining or other works of the employer.]

Salary.

15. The employer shall pay to the manager the annual salary of [£200] by equal monthly payments upon the first day of each month, the first payment to be made on the [*date*].

Power to determine.

16. This agreement may be terminated at any time after the [*date*] by either party giving to the other at his last known place of residence in England, three months' previous notice in writing of his intention to terminate the same, or by either party paying to the other the amount of three months' salary in lieu of such notice, and such notice shall be duly given if sent by post.

As witness, &c.

Form 13.

Agreement appointing Manager of Bleaching Works.

Parties.

1. An Agreement made, &c., between A. B., of, &c. (on behalf of himself and his partner, C. D., trading under the firm of B. & Co., of, &c.), of the one part, and E. F., of, &c., of the other part.

Agreement.

2. The said E. F. shall for five years from the [*date*], or until the prior determination hereof, faithfully serve the said firm of B. & Co. as a manager in the business of bleachers and finishers at X., and shall devote his time and best ability and attention wholly and exclusively to the management and superintendence of the practical details of the processes carried on in the works of the said firm at X. aforesaid and otherwise as hereinafter mentioned, and shall not, either directly or indirectly, conduct, carry on, or be engaged or

Form 13.

interested in any other trade, business or calling whatever either alone or in partnership with, or as agent or servant of any other person or corporation during the continuance of this agreement.

Travelling.

3. The said E. F. shall in addition to the above duties travel to Y. and such other places on such days, and shall do and perform all such acts and services within his capability connected with the said business as the said A. B. shall from time to time direct; and shall not, without the consent of the said A. B., hire or discharge any foreman or other principal workman.

Time and attention.

4. The said E. F. shall not at any time, without the previous consent of the said firm, absent himself from the said business except in case of illness or other unavoidable cause; but he shall, except when travelling as aforesaid, attend and remain at the works of the said firm every day on which (and during the hours when) the said works are open, and during such additional hours as he may be required to superintend the workmen from time to time remaining or being upon the said works after the ordinary working hours.

Secrecy.

5. The said E. F. shall not make known any of the secrets, business correspondence, or connections of the said firm to any person or corporation.

Agreement by firm.

6. If during the term aforesaid the said E. F. shall fulfil all the stipulations on his part herein contained, the said firm shall during the said term employ the said E. F. as such manager and finisher in the said business at X. aforesaid.

Payments by firm.

7. During the continuance of this agreement, the said firm shall pay to the said E. F. the rent, rates, and taxes of a dwelling-house, and allow him for all coal and gas used therein for domestic purposes, such dwelling-house to be found by the said E. F. and to contain not less than two sitting rooms, three bed rooms, kitchen, and all usual accommodation, and to be such as shall be approved of by the said firm. The amount of such rent, rates and taxes, coal and gas not to exceed £—— per annum and to be paid to the said E. F. at the end of each year of service upon the production of proper vouchers for the same.

Salary.

8. During the continuance of this agreement the said firm shall pay to the said E. F. a salary of [£200] per annum by equal quarterly payments on [*dates*] in every

Form 13.

year, the first quarterly payment to be made on [*date*], and if this agreement shall be determined by the death of the said E. F., the said firm shall pay to his executors or administrators a proportionate part of the said salary for the period which may have elapsed between the last previous quarter day and such death.

Travelling expenses.

9. In addition to the aforesaid salary, the said firm shall during the continuance of this agreement pay to the said E. F. a sum of 20*s.* per week for travelling and other expenses to and from Y., and when, with the consent of the said firm, he shall be travelling to other places, they shall allow him the sum of 2*s.* 6*d.* per day for dinner and the amount of first-class return railway fare from X. to such places.

Determination.

10. If the said E. F. shall fail to fulfil any stipulation on his part herein contained, or shall neglect or refuse to do or perform any act or service which the said A. B. shall direct, or shall not do or perform the same to the reasonable satisfaction of the said A. B., or shall be absent from his duties without leave, except for such cause as aforesaid, or shall become incapable of the effectual performance of his duties, the said firm may determine this agreement by giving to the said E. F., or leaving at his usual or last known place of abode, three calendar months' notice in writing of their intention so to do.

Interpretation.

11. The words "the said firm" used in this agreement shall include the members or member thereof for the time being, and this agreement shall not be affected by any change in the said firm caused by death or otherwise.

Arbitration.

12. [*Arbitration clause, as in Clause* 16, *Form* 9, *p.* 215.]

As witness, &c.

Form 14. Agreement between a Brewer and his Collector.

Parties.

1. An Agreement made [*date*] between J. B., of &c. (hereinafter called "the employer"), of the one part, and J. H., of &c. (hereinafter called "the collector"), of the other part.

Engagement.

2. The collector will from the date hereof become the collector of the employer in his trade of a brewer, and receiver of the rents and profits of his messuages, cottages,

lands, tenements, and hereditaments in the county of Y., and will give his whole time and attention to his duties as such [and to such other services as the employer shall from time to time direct]. Form 14.

3. The collector will not, without the consent in writing of the employer, divulge any of the trusts, secrets, accounts, or dealings relating to the said trade; and will be just and faithful to the employer in all his business dealings and transactions, and will render to the employer a just and true account of the same at all times when he shall require the same. Fidelity.

4. The collector shall keep such books of account as shall be necessary, wherein he shall fairly write an account of all moneys received and paid, and all goods bought or received, or sold or delivered, upon credit or otherwise, and the rates and prices at which the same shall be bought or received in or sold or delivered out, with all dates and circumstances necessary to manifest the condition of the said trade. The said books of account shall always be kept at the employer's brewery office, and be at all times open to the inspection of the employer, or any person appointed by him for that purpose. Books to be kept.

5. The employer will pay to the collector, by quarterly payments on the usual quarter days, the clear yearly salary of £300, the first quarterly payment thereof to be made on the [*date*].[1] Salary.

6. In case either party shall wish to determine this agreement, it shall be lawful for him so to do on giving to the other six calendar months' notice in writing; and in case such notice shall be given, a proportionate part of the said yearly salary from the last quarterly day of payment thereof Power to determine.

[1] [5a. The employer will also from the [*date*] permit the collector to occupy the dwelling-house now in the occupation of C. D., adjoining the brewery in X. aforesaid, free of rent and taxes; and also will, at the cost of the employer, provide for the collector sufficient coals and beer for the use of himself and his family and domestic servants for the time being residing in the said dwelling-house, and also will, at the like cost, keep a cow near the said premises for the use of the collector and his family, and also a horse to be used by him in and about the necessary journeys on the business of the said trade.]

Form 14.

up to the time of the expiration of the said notice shall be paid by the employer to the collector; and then this agreement shall cease, but without prejudice to any right of action, claim or demand by either party, by reason of any previous breach or non-performance by the other of any stipulation herein contained.[1]

As witness, &c.

Form 15

Agreement between a Manufacturer and his Traveller.

Parties.

1. An Agreement made the [*date*] between A. B., of, &c., of the one part, and C. D., of, &c., commercial traveller, of the other part.

Engagement.

2. The said C. D. will serve the said A. B. as commercial traveller for the purpose of obtaining orders for the sale of [*specify the goods*] manufactured by the said A. B. at his works at X., in such places in England as the said A. B. shall determine [*or as may be mutually agreed upon between the parties*] (hereinafter called "the travelling district").

Duties.

3. It shall be the duty of the said C. D. once in every month to make a tour of the travelling district, and in every such tour to visit as many of the cities, towns and places in the district, likely to prove remunerative markets for the sale of the goods of the said A. B. on such visit, as can reasonably be so visited, and he shall use his best endeavours in making such visits to procure orders for the sale of the said goods as well among existing customers of the said A. B. as among new connections, and to ascertain so far as possible whether all customers visited (both old and new) are solvent and worthy of credit.

Whole time to be given.

4. The said C. D. shall devote his whole time to his aforesaid duty, and shall not during his employment by the said A. B. undertake any other business, and, in particular, shall not, either directly or indirectly, sell or offer for sale, or solicit or take orders for any article of merchandize on behalf of any person or company other than the said A. B.

Obedience to instructions.

5. The said C. D. shall carry out all instructions which shall be given to him by the said A. B. as to the prices of

[1] Other provisions may be inserted from Forms 11 and 12, if desired.

the said goods, the credit, if any, to be given to customers, the order in which any tour of the travelling district is to be made, the visiting, or the omitting or ceasing to visit, any place or places, person or persons, and generally as to the conduct of his employment; and in the absence [*continue as in* § 10 *of Form* 11, p. 219, *ante*].

Payments. 6. THE said C. D. shall not [*continue as in* § 12 *of Form* 12.]

Commissions. 7. THE said C. D. shall under no circumstances [*continue as in* § 13 *of Form* 12.]

Expenses. 8. ALL expenses of the said C. D. for travelling, board, lodging, and otherwise, shall be paid by the said A. B. [*or* C. D. *according to arrangement*].

Salary, &c. 9. THE said A. B. will, during his employment of the said C. D., pay him the salary of £3 per week, the first payment to be made on [*date*], and also will at his own expense procure for the said C. D. a pass between all necessary stations on the lines of the X., Y. and Z. Railway Companies, and will also pay to the said C. D. a commission of 10 per cent. upon the invoice price of all goods sold through him. The said commission [shall only be payable upon sales which are adopted and ratified by the said A. B., and] shall be payable on the last day of the calendar month in which the goods so sold shall have been delivered: [PROVIDED that if the said A. B. shall fail to recover the whole of the price of any goods in respect of which any such commission shall have been allowed or paid, the said C. D. shall allow in account, or repay to the said A. B., or permit him to deduct and retain out of the next monthly payment, the whole or, as the case may be, a proportionate part of the commission paid in respect of such goods].

Term. 10. THE employment of the said C. D. under this agreement shall commence from the date hereof, and shall continue for twelve calendar months determinable as hereinafter mentioned.

Power to determine. 11. EITHER party shall be at liberty to put an end to this agreement at any time after [*date*], on giving to the other three calendar months' previous notice in writing of his intention to do so, which notice shall be sufficient if sent by post addressed to the said A. B. at his commercial office, or to the said C. D. at his address then last known to the said A. B. The said A. B. may also at any time peremptorily

Form 15.

determine this agreement without previous notice upon paying or tendering to the said C. D. three months' salary at the rate of £3 per week in lieu of notice; and in the event of such determination as last aforesaid, the said C. D. shall only be entitled to the commission on sales effected up to the date of such payment being made or tendered.

Traveller to give up documents on determination.

12. Upon the determination of this agreement the said C. D. shall immediately give up to the said A. B. his railway passes and all books, lists of customers, papers, memoranda, letters, and documents relating to the business, and shall not retain any copies of any such books, list of customers, papers, memoranda, letters, or documents as aforesaid.

Restrictions after determination.

[13. In the event of this agreement being determined by the said C. D., he shall not, for the space of twelve calendar months thereafter, directly or indirectly sell or solicit or take orders for the sale of goods similar to those manufactured by the said A. B. in the travelling district, or any part thereof, either on his own account or for any other person or company without the previous consent in writing of the said A. B.]

As Witness, &c.

Form 16. Agreement between Manufacturers and a Provincial Agent.

Parties.

1. An Agreement made, &c., between B. A. and D. A. (trading as A. Brothers), of, &c., of the one part, and C. D., of, &c., of the other part:—

Engagement.

2. The said C. D. (hereinafter called "the agent") will act as agent for the said A. Brothers (hereinafter called "the principals") for the sale, in the town of X., of articles and goods manufactured by them for the term of five years from the date hereof, and will receive all such goods as may be consigned or sent to him by the principals, and will use his best endeavours to sell the same at such prices as shall be specified in writing by them, or such higher prices as can reasonably be obtained, and will at his own expense deliver such goods to the purchasers thereof, the carriage from Y. to X. being paid by the principals.

Sales.

3. The agent shall sell only for ready money, or to

persons of responsibility, and worthy to be trusted, and in selling upon credit shall be cautious and make due inquiries into the responsibility and position of intending purchasers, and shall make a memorandum of every such inquiry and the result thereof in a book to be kept by him for that purpose, and shall from time to time transmit copies of the entries in such book to the principals with his monthly account hereinafter mentioned. Form 16.

Credit.

4. The agent shall not give credit for goods exceeding the value of £100 to any person, and shall not give credit to any person for more than three months, and shall give no credit to any person whom the principals shall by notice in writing have forbidden him to trust.

Account books.

5. The agent shall keep proper books of account, in which he shall make plain and correct entries of all goods received from the principals, and of all goods sold or delivered by him as such agent as aforesaid, and of all orders received, and of all other transactions and matters concerning the agency; and shall on the first day of every month transmit to the principals a full, clear, and correct statement in writing of all goods, orders, and transactions which shall have been received, sold, or delivered, or taken place in relation to the agency during the preceding month, distinguishing the sales made for cash and on credit.

Periodical accounts.

6. The agent shall on the first day of every month [*or* of March, June, September, and December, in every year] account for and transmit to the principals all moneys, bills, and securities for money received by him during the preceding month [*or* three months], in respect of all goods sold by him as such agent as aforesaid.

Restrictions on agent.

7. The agent shall not, without the consent in writing of the principals, act as agent for any other person or company for the sale of goods of a nature similar to those manufactured [and supplied to him] by the principals.

Obedience to instructions.

8. The agent shall, in conducting the agency, in all respects conform to such instructions as he shall receive from the principals, and in the absence of special instructions shall act in such manner as he shall judge to be most conducive to their interests.

Agent not to sell in own name.

[9. The agent shall not sell the goods received by him from the principals in his own name, and shall cause the

Form 16.

words "Agent for A. Brothers, of Y.," to be placed, and shall keep the same during the agency in a prominent position (after his own name) upon the front of his principal place of business, and the same words shall be conspicuously printed at the head of every memorandum, invoice, and other document which shall be used by the agent in connection with the agency, and all letters, bills, and other documents relating to the goods of the principals, or to the agency, written or signed by the agent shall be signed by him as such agent as aforesaid.]

Remuneration.

10. The principals shall pay to the agent a commission of £10 per cent. on the nett proceeds of all goods sold by him for them as such agent as aforesaid, and such commission shall be allowed in account, and may be deducted by the agent from the amounts payable monthly [*or* quarterly] by him under clause 6 hereof.

Damages.

[11. The agent shall not be answerable for any loss or damage which may happen to any goods before they shall come to his hands or within his custody, nor for any loss or damage which may happen to any which have actually come to his hands, unless such loss or damage shall happen through his own wilful default or neglect.]

Power of attorney.

12. The principals appoint the agent their attorney for them, and in their names to sue for, recover, and receive all sums of money owing on account of any goods sold by him as such agent as aforesaid, and to give receipts (which shall be sufficient discharges) for the same.

Power to determine

13. The agency may be terminated by either party by giving to the other six calendar months' previous notice in writing, and upon the expiration of such six months shall accordingly determine.

Special power to determine.

14. If the agent shall become insolvent or commit any act of bankruptcy, the agency shall thereupon forthwith determine; and if the agent shall do anything contrary to any of the provisions herein contained, it shall be lawful for the principals forthwith by notice in writing to determine the agency; and if the agency shall be determined under the provisions of this clause, or clause 13 hereof, the accounts between the parties shall be adjusted and settled as if the said term of five years had expired by lapse of time.

Goods to

[15. All goods supplied to the agent by the principals

shall remain their property until *bonâ fide* sold by him as their agent, and at the end or sooner determination of this agreement (from whatever cause), all such goods which shall remain then unsold, or be in his custody, shall be delivered up to the principals.] Form 16. belong to principals.

16. If any dispute [*continue as in* § 16 *of Form* 9, p. 215, *ante.*] Arbitration.

In witness, &c.

Agreement between a Mineral Water Company and a Provincial del credere Agent. Form 17.

1. An Agreement made, &c., between the A. Company, of, &c. (hereinafter called "the Company"), of the one part, and C. B., of, &c., of the other part:— Parties.

2. The said C. B. is hereby appointed and will act as sole wholesale *del credere* agent for the sale in the town of X. and within a radius of ten miles as the crow flies from the X. Town Hall (which town and radius are hereinafter called "the agency district"), of the natural mineral water imported by the company, and known as "The A. Natural Mineral Water," from the date hereof, until such agency shall be determined as hereinafter mentioned. Engagement.

3. The said C. B. (hereinafter called "the agent") will use his best endeavours to sell the said water within the agency district at prices not exceeding those specified in the 1st schedule hereto for transactions with the trade, and not exceeding those specified in the 2nd schedule hereto for transactions with private individuals, and will at his own expense cart from the X. Railway Station, warehouse, and deliver such water to the purchasers thereof, in carts or vans having the words "A. Water" conspicuously painted on one side thereof, the carriage from London to X. being paid by the company. Prices.

4. The company may supply the said water direct to any person in the agency district, but in every such case a memorandum of the water so supplied shall forthwith be sent by the company to the agent, and all water so supplied shall be deemed to be supplied to or through the agent. Direct supply.

5. The agent shall during the agency occupy the company's leasehold shop and offices situate at X. aforesaid, rent free, but shall himself pay all rates and other outgoings in respect Occupation of office.

Form 17.

thereof. The agent may sell on the premises artificial mineral waters of his own manufacture only, but shall not during the agency sell either there or elsewhere any natural mineral water except that supplied to him by the company, and shall not act as agent for the sale of any mineral water whatsoever for any person or corporation except the company, and shall publicly announce his appointment as agent to the company by such advertisements, showcards, invoices, and other printed stationery as the company shall from time to time furnish him with.

Books to be kept and accounts rendered.

6. The agent shall keep proper books of account, and shall make therein plain and correct entries of all water received from the company, and of all water sold by him as such agent as aforesaid, and of all orders received and other transactions relating to the agency, and shall on the first day of every month transmit to the company a full, clear, and correct written statement, copied from such books, of all water so received and sold, and of all such orders and transactions during the then preceding calendar month.

Liability of agent.

7. The agent shall be responsible to the company for the amount of the invoice price of all water supplied by the company to the agent and to any person in the agency district. All water shall be invoiced to the agent at the prices specified in the 1st schedule hereto. The agent shall, on the first day of every month during the agency, account for and transmit to the company the amount of the invoice price of all water supplied by the company to the agent or to any other person within the agency district during the then preceding calendar month.

Rent and remuneration.

8. The company shall in the first instance pay the rent of the said shop and offices at X. aforesaid, and shall pay to the agent by equal quarterly payments the sum of £50 per annum for storage, cartage, and delivery of goods within the agency district, and a commission of 10 per cent. shall be calculated upon the wholesale prices (as specified in the 1st schedule hereto) of all water supplied by the company to the agent or to any other person within the agency district, and shall be paid or applied as follows (namely), if such commission shall exceed £120 per annum, the sum of £120 part thereof shall be retained by the company in repayment of the rent of the said shop and offices, and the balance thereof

Form 17.

shall be paid to the agent, but if such commission shall not exceed £120 per annum, the whole thereof shall be retained by the company in respect of such rent as aforesaid. Any commission payable to the agent under this clause shall be paid quarterly.

Damage.

9. The company shall not be answerable for any loss or damage which may happen to any goods consigned to the agent or any person within the agency district after such goods have left the London warehouse of the company.

Power to determine.

10. The agency may be terminated at any time by either party upon giving to the other three months' previous notice in writing to that effect.

Determination in specified events.

11. If the agent shall become insolvent or commit any act of bankruptcy, the agency shall *ipso facto* determine, and if he shall break any stipulation herein contained, the company may forthwith, by notice in writing, determine the agency as from the date of such notice.

Accounts on determination.

12. If the agency shall be determined upon any day other than the first day of any month, the accounts between the parties shall be adjusted from the then last monthly settlement.

As witness, &c.

The 1st Schedule above referred to.

The 2nd Schedule above referred to.

Form 18.

Agreement between a Patentee of Railway Buffers and his Agent.

Parties.

1. An Agreement made the, &c., between A., of, &c., of the first part, and B., of, &c., of the second part:—

Engagement.

2. The said B. shall for the term of three years from the date hereof be employed by and act for the said A. as agent for the sale of his patent railway buffers, manufactured by X., to the several railway companies (or departments of railway companies, as the case may be) specified in the first column of the schedule hereto, upon the terms and conditions herein contained, and shall use his best endeavours to procure the exclusive adoption by the said companies or departments respectively of the said buffers.

Form 18.

Remuneration.

3. For every set of the said buffers which shall be supplied by the said X. during the continuance of this agreement to any of the said several companies or departments, the said A. shall, subject to clauses 4, 5 and 6 hereof, pay to the said B. a commission of the amount set opposite the name of such company or department in the second column of the said schedule, whether the orders for the buffers shall be received direct from such company or department, or through the said B.

No remuneration for small sales.

4. As regards the supply to each of the said companies and departments, no commission shall be payable to the said B. during the first year of such supply, unless the number of complete sets of four buffers so supplied thereto during the year shall amount to the number set opposite to the name of such company or department in the third column of the said schedule; nor in any subsequent year in which the number of complete sets so supplied shall be less than the number set opposite to such name in the fourth column of the said schedule.

Partial power to determine.

5. If any of the said companies or departments, after having used or adopted the said buffers, shall (from whatever cause) either cease to use the same, or adopt any other description of buffer not previously used by such company or department (as the case may be), either in substitution for or concurrently with the said patent buffers, or shall for the space of six calendar months give no orders for the said patent buffers to the said X., then the said A. may thereupon give to the said B. three calendar months' notice in writing to determine this agreement as regards such company or department only; and shall be at liberty at any time after the expiration of such notice to supply such company or department with the said patent buffers, either directly or through any agent or agents, without the intervention of, or payment of any commission to, the said B.

Special powers as to specified company.

6. Notwithstanding anything herein contained, the said A. shall be at liberty to enter into any arrangements upon such terms as he may think fit, for the manufacture of his said patent buffers by the Z. Railway Company, at its works at S., for its own use, and in the event of any such arrangement being carried out, the said A. shall pay to the said B. a commission of 2*s.* 6*d.* for every complete set of the said

patent buffers which shall be manufactured in pursuance thereof, and any such arrangement shall be without prejudice to the rights of the said B. under this agreement in respect of buffers supplied to the Z. Railway Company by the said X. Form 18.

7. The said B. shall not, during the said term, act as agent for the sale of or solicit orders for any railway buffers of any description whatever other than those patented by the said A., and manufactured by the said X., and if there shall be any breach of this clause, this agreement shall immediately thereupon determine without prejudice to the rights of the parties in respect of any of their past transactions. Restrictions on agent.

The Schedule above referred to.

G. N. R. (Passenger) - - -	15%	20	300
Do. (Goods) - - - -	,,	25	200
M. R. (Passenger) - - - -	,,	20	250
Do. (Goods) - - - - -	,,	35	300
&c.		&c.	&c.

Agreement for employment of Surveyor and Architect, and Occasional Clerk of Agent. Form 19.

1. An Agreement made [*date*] between Sir C. D., of the one part, and A. B., of, &c., of the other part. Parties.

2. The said A. B. shall be employed and act as surveyor and architect to the said Sir C. D., and also as occasional clerk to his principal agent, on the terms herein contained. Agreement for employment.

3. The engagement shall commence on [*date*], and may be determined by either party on giving three calendar months' previous written notice expiring at any time, or, if determined by Sir C. D., on paying or tendering, in lieu of notice, three months' salary in advance. Power to determine.

4. All plans, surveys, and other documents of Sir C. D. which were in the possession of Mr. E. F. (his late surveyor) at the time of his death, having been received by G. H., Esq. (the principal agent of Sir C. D.) and handed by him to A. B., are to be kept by him on behalf of Sir C. D., so long Plans, &c.

Form 19.

as Sir C. D., or his principal agent for the time being, shall think proper, and shall be in all respects subject to the order and disposition of Sir C. D. or his principal agent for the time being.

Duties.

5. The duties of A. B. are (under and subject to the general or special instructions of Sir C. D., or of his principal agent for the time being)—

(*a.*) To lay out for building purposes the portions of the estates for the time being intended to be leased for those purposes; to show such portions to persons desirous to treat for leases, and to conduct (but not to conclude or to render binding) negotiations for leases; to prepare plans and, if leases be intended to be granted, to copy such plans on the engrossments of such leases, and to see that all lessees' covenants as to buildings, fences, streets, sewers, and other works (whether such covenants are contained in leases granted before or after the engagement of A. B.) are duly performed, or, if not performed, to report every breach of covenant to the principal agent of Sir C. D. for the time being.

(*b.*) To make periodical perambulations of the estate, to see that the buildings on the estate are in proper condition, that there are no nuisances, and to report to the said principal agent for the time being all circumstances calling for observation;

(*c.*) To correct, complete, and copy forthwith for the use and information of the solicitors of Sir C. D., the tithe plans of the estates of Sir C. D., and from time to time to make in such plans, and in the office plans at X. Hall, such additions and alterations as for the time being shall be requisite, and to renew such plans as occasion shall require;

(*d.*) To make, in every year of service, a new and complete survey and plan, with book of reference, of at least one tenth part of the estates of Sir C. D. for the time being, to the intent that once in every ten years a new and complete survey and map, with book of reference, of the whole of the estates, may be completed for the use of Sir C. D.;

(*e.*) To attend at each of the audits for receipt of chief

rents, and when and if required by the said principal agent for the time being at the audits for receipt of other rents, and in general to act as clerk to the principal agent for the time being in such manner as he shall direct: and Form 19.

(*f.*) Generally to make and do all surveys, plans, designs, drawings, estimates, valuations, specifications, examinations, superintendence, inspections, reports, and other work of a surveyor and architect, which, whether of the kind hereinbefore specified or not, Sir C. D. or his principal agent for the time being shall request the said A. B. to make and do, or which, without such request, the surveyor and architect for the time being of a large landed estate ought, in the ordinary and reasonable performance of his duties, to make and do.

6. All plans, surveys, and other documents, so made as aforesaid, are to be the property of Sir C. D., and to be subject to the order and disposition of him or his principal agent for the time being. Plans, &c.

7. A. B. shall not, under any circumstances, act as agent for, or prepare plans or other documents for any lessee of Sir C. D., or for any person negotiating or applying for a lease of any property of Sir C. D. Not to act for others.

8. The salary of A. B. shall be £250 per annum, to be payable quarterly on the usual quarter days, and to be considered as including reimbursement for all expenses of stationery, travelling, clerks, and all other expenses whatsoever, the first quarterly payment of the said salary to be made on [*date*]. Salary.

As witness, &.

Agreement between Solicitor and Client as to Remuneration. Form 20.

1. An Agreement made, &c., between A. B., of, &c., of the one part, and C. D., of, &c., of the other part. Parties.

2. Whereas the said A. B. is in the habit of making purchases of freehold, copyhold, and leasehold land, and of selling, mortgaging, leasing, and otherwise dealing with the Recitals.

Form 20.

land so purchased by him; has requested the said C. D. to act as his solicitor in all transactions relating to the land now held by the said A. B. and of all land to be purchased by him during the continuance of this Agreement, upon the terms hereinafter contained, which the said C. D. has agreed to do.

Testatum. 3. NOW IT IS HEREBY AGREED as follows:—

Retainer. 4. A. B. shall employ C. D. as his solicitor in all matters of conveyancing connected with purchases, sales, mortgages, leases, and other transactions in relation to land which A. B. shall enter into during the continuance of this Agreement.

Duties of solicitor. 5. C. D. shall investigate and advise upon all such titles, and at his own expense peruse and prepare all such abstracts, requisitions, replies, instructions to counsel, contracts, conditions of sale, deeds, and other documents, and arrange for and attend all such interviews, conferences, and consultations with A. B. and his counsel, and any other persons, and make all such searches and journeys in England but not elsewhere (either personally or by his clerks), and provide and pay for all such stamps and pay such fees to counsel and counsel's clerks as may be necessary for the proper transaction of all business mentioned in clause 4 hereof.

Remuneration. 6. A. B. shall pay to C. D., and he shall accept as remuneration for his services as such solicitor as aforesaid (other than services rendered in relation to the matters mentioned in paragraph 7 hereof), and in lieu of the ordinary professional and other charges which he would otherwise be entitled to make, the following commissions (namely):—

(*a*) In purchases £3 per cent. on the gross purchase-money.

(*b*) In sales £2 per cent. on the gross purchase-money.

(*c*) In mortgages { £1 per cent. on the gross amount borrowed / £2 per cent. on the gross amount lent } by A. B.

(*d*) In leases £5 per cent. on the first year's rent.

Extra costs. 7. IN addition to such commission as aforesaid C. D. shall be entitled to charge and A. B. shall pay him the ordinary professional costs, charges, and expenses in respect of any

services which he may render to A. B. in relation to all or any of the following matters (namely) :— Form 20.

(*a*) Actions for specific performance, damages, redemption, foreclosure, or recovery of land.

(*b*) Summonses under the Vendor and Purchaser Act, 1874, or the Conveyancing Act, 1881, or any other Statute.

(*c*) Other contentious business, whether transacted in any action, or in court, or in the chambers of any judge or not.

(*d*) Fees to counsel and counsel's clerks in other than conveyancing matters.

8. This agreement shall commence from and apply to all business transactions entered into by A. B. after the 31st of December, 1888, and shall continue during the joint lives of the parties, or until three months after either of them shall have given to the other notice in writing of his desire to terminate the same. Term.

As witness, &c.[1]

Agreement under Seal between Trustees and their Solicitor as to Remuneration for managing the Trust Estate. Form 21.

1. This Indenture made, &c., Between A. B. and C. (the present trustees of the will [*date*] of X. deceased), of the one part and D. of the other part: Parties.

2. Whereas the said D. has for some time past acted and is now acting as solicitor to the trustees of the above-mentioned will, and the said A. B. and C. (who are hereinafter called "the trustees") have requested him to continue to act as such solicitor upon the terms hereinafter appearing, which he has consented to do: Recitals.

3. Now this Indenture witnesseth as follows:— Testatum.

4. D. shall act as solicitor and agent to the trustees, and shall keep the books relating to the estate subject to the trusts of the said will (hereinafter called "the trust estate"), and shall collect the rents, dividends, interest, and other Retainer.

[1] Care must be taken that the agreement is signed by *both* parties. (*Re Raven*, 30 W. R. 134.)

Form 21.

income of the trust estate, as the same shall become payable, and shall forthwith pay the same to the bankers of the trust estate to the credit of the trustees, and make all necessary arrangements for the payment of calls upon shares, maintenance money, and other outgoings, and for the investment of all savings and accumulations of income, and for such changes of investment (whether of capital or accumulations of income) as the trustees shall from time to time direct, and shall prepare and perfect proper half-yearly statements of account of the trust estate, and shall arrange for and have all such personal interviews with the trustees and other persons, and at his own expense prepare and peruse all such documents and make all such searches and journeys (either personally or by his clerk or clerks) within ten miles from the Bank of England as may be necessary for any of the purposes aforesaid or incidental thereto, and shall generally advise the trustees and act as solicitor to them in all matters relating to the trust estate and to the management thereof.

Remuneration.

5. The trustees shall pay to D. and he shall accept as remuneration for his services as such solicitor and agent as aforesaid (other than services rendered in relation to the matters mentioned in paragraph 6 hereof), and in lieu of the ordinary professional and other charges which he would otherwise be entitled to make for such services, a commission of 3 per cent. per annum upon the gross income of the trust estate from the 1st of January, 1889, such commission to be paid half-yearly.

Extra costs.

6. In addition to the said commission D. shall be entitled to receive and the trustees shall pay to him the ordinary professional costs, charges, and expenses in respect of any services which he may render as solicitor to the trustees in relation to any of the following matters (that is to say)—

(*a*) Cases for, instructions to, or conferences with counsel.

(*b*) Fees to counsel and counsel's clerks.

(*c*) Journeys (including hotel as well as travelling expenses) made by D. or any clerk of his to any place more than ten miles from the Bank of England.

(*d*) Litigious business of every description, including all applications to any Court or in Chambers in reference to the trust estate, whether hostile or not.

Audit.

7. The books of the trust estate shall be audited half-

yearly in June and December by an accountant appointed and paid by the trustees. Form 21.

8. This agreement shall commence from and apply to all services rendered after the 1st of January, 1889, and shall continue until it is determined as hereinafter provided. Term.

9. If the trustees shall give to D. or D. shall give to the trustees notice in writing of their or his desire to determine this agreement the same shall determine upon the expiration of three calendar months from the day upon which such notice shall be given. Power to determine.

In witness, &c.

Articles of Clerkship. Form 22.

1. An Agreement made the [*date*] between A. B., of, &c., a solicitor of the Supreme Court (hereinafter called "the solicitor"), of the first part, C. D., of, &c. (hereinafter called "the father"), of the second part, and E. D., the son of the said C. D. (hereinafter called "the clerk"), of the third part. Parties.

Witnesseth as follows:—

2. The clerk hereby of his own free will, and with the consent and approbation of the father, hereby places and binds himself as clerk to the solicitor from the date hereof for the term of five years. Clerk binds himself.

3. The father and the clerk hereby covenant with the solicitor that the clerk will faithfully and diligently serve the solicitor in his profession during the said term of five years, and that the clerk will not cancel, obliterate, spoil, destroy, waste, embezzle, spend or make away with any of the books, papers, moneys, stamps, chattels, or other property of the solicitor or his firm or any partner therein, or of any of his or their clients or employers which shall be deposited in his or their hands, or come into or be entrusted to his or their care, custody, or possession, or the hands, care, custody, or possession of the clerk. Clerk to serve faithfully.

4. The father hereby covenants with the solicitor that if the solicitor or his firm or any partner therein shall sustain or suffer any loss, damage, or prejudice by the misbehaviour, neglect, or improper conduct of the clerk, the father will indemnify the solicitor and make good and reimburse to him the amount or value thereof. Father to make good losses.

Form 22.

Clerk to obey orders, &c.

5. The father and the clerk hereby covenant with the solicitor that the clerk will keep the secrets of the solicitor and his firm and partners, and obey and execute his and their lawful and reasonable commands, and will not absent himself from the solicitor's service without his previous consent, and will at all times conduct himself with due diligence, honesty, and propriety, and faithfully and honestly serve the solicitor in all things, and will not during the three years next after leaving the employment of the solicitor offer to transact any professional business for any person who shall have been a client of the solicitor or his firm during the said term of five years.

Solicitor to teach clerk.

6. In consideration of the premises, and of the sum of £200 now paid by the father to the solicitor (the receipt whereof the solicitor hereby acknowledges), the solicitor hereby covenants with the father and also with the clerk that he will accept and take the clerk as his clerk, and will by the best means he can, and to the utmost of his skill and knowledge, teach and instruct the clerk in the practice or profession of a solicitor of the Supreme Court. And also will at the expiration of the said term use his best means and endeavours, at the request and cost of the said father and clerk, or either of them, to cause the said clerk to be admitted and sworn a solicitor of the said Supreme Court, provided the said clerk shall have well and faithfully served his said clerkship, and shall have successfully passed all such examinations as articled clerks are by law or custom bound to submit to before being so admitted.

In witness, &c.

Apprenticeship Indenture.

Form 23.

Parties.

1. This Indenture made [*date*], between A. B., of, &c. (hereinafter called "the Master"), of the first part, C. D., of, &c. (hereinafter called "the Father"), of the second part, and E. D., the son of the said C. D. (hereinafter called "the Apprentice") of the third part, Witnesseth as follows:—

Covenants by master.

2. In consideration of £100 now paid by the father to the master, and of the covenants by the father and the apprentice

Form 23.

hereinafter contained, the master hereby covenants with the father and the apprentice as follows:—

(a.) To receive the apprentice into his employment as his apprentice for three years from the date hereof. To take apprentice.

(b.) During the said term, by the best means he can, to teach and instruct the apprentice in the trade or business of [*specify it*], and in all things relating thereto to the best of his knowledge, power and ability. To teach him.

(c.) To provide the apprentice during the said term with sufficient meat, drink and lodging, in the house of the master, or in the lodgings provided by him for his apprentices and assistants. To provide board and lodging.

(d.) To pay to the apprentice 2 shillings per week during the first year, 3 shillings per week during the second year, and 5 shillings per week during the third year of the said term. To pay wages.

(e.) Not to require the apprentice to work or attend to business more than 9 hours per day, except under exceptional pressure of business, and not in any event to require him to work mork than 50 hours per week. To limit hours.

(f.) To allow the apprentice the following holidays— namely, all Sundays, all Bank Holidays, all Saturday afternoons after 2 o'clock p.m., Good Friday, and a fortnight at such time as may be most convenient to the master between the 1st of June and the 31st of October in each year. To give holiday.

3. In consideration of the premises the father hereby binds and places the apprentice, and the apprentice hereby binds and places himself to and with the master during the term aforesaid, during which time he shall diligently and faithfully serve the master, keep his secrets, and cheerfully and diligently obey his lawful commands, and shall not do any damage to the master or see any damage done by others without informing the master thereof, and shall not waste or without permission lend the master's goods, and shall not buy or sell without the master's permission, nor absent himself without permission from the master's service, but shall in all things behave as a faithful apprentice ought to do, and Duties of apprentice.

Form 23.

duly account for all the master's money and goods entrusted to him.

Covenants by father.

4. For the consideration last aforesaid the father hereby covenants with the master as follows :—

To provide clothing, &c.

(a.) That the father will, during the said term, provide the apprentice with suitable clothing, pocket-money, medicine, medical attendance, and other necessaries (except board and lodging), during the said term.

Against competition.

(b.) That the apprentice will not within two years after the expiration or determination of the apprenticeship, directly or indirectly carry on or be engaged or concerned in carrying on the business of a [*specify it*], within three miles as the crow flies from the master's then principal place of business.

5. And it is hereby agreed as follows :—

Dismissal.

(a.) If the apprentice shall be guilty of disobedience or misconduct towards the master or any member of his family, the master may thereupon dismiss the apprentice, and shall not be required to return any part of the said premium.

Death or incapacity.

(b.) If the master or the apprentice shall, during the said term, die, or be incapacited by unsoundness of mind or illness from teaching or serving as aforesaid, then the apprenticeship shall determine, and the master or his legal personal representatives shall repay to the father a proportionate part of the said premium according to the portion of the said term which may then be unexpired.

In witness, &c.[1]

Form 24.

Agreement for Production and Performance of Stage Play.

Introduction.

1. An Agreement made [*date*] between A. B., of, &c., (hereinafter called "the Author"), of the one part, and C. D., of, &c., the lessee of the X. Theatre (hereinafter called "the Manager"), of the other part.

[1] The stamp duty in respect of an indenture of apprenticeship, where a premium is paid, is now 2*s.* 6*d.*, instead of the *ad valorem* duty prescribed by the Stamp Act, 1870. See Customs and Inland Revenue Act, 1890 (53 Vict. c. 8, § 19).

Form 24.

Agreement.

2. The author and the manager hereby agree to join in the adventure of producing and performing at the X Theatre a stage play known as "Y. Z." (of which the author is the author) for the season, and upon the terms hereinafter mentioned.

Expenses.

3. The author and manager shall contribute towards the expense of advertising, bringing out, and performing the said play, such sum as may be required, not exceeding £1,000, of which the author shall contribute one-fourth and the manager three-fourths.

Use of theatre, &c.

4. The manager will permit the use for the rehearsals, production, and performance of the said play of all scenery, and properties now in or upon the X. Theatre without any charge, and will also permit, for the purposes aforesaid, the use of the said Theatre, charging the joint adventure therefor at the rate of £200 for each performance.

Use of play.

5. The author will permit and license the use of the said play for the said rehearsals, production, and performance, charging therefor to the said joint adventure a royalty of ten per cent. on the gross receipts of each performance. The said royalty of ten per cent. is to be payable weekly from the date of the first performance of the said play. At the termination of the series of performances all copyrights in relation to the said play are to remain the property of the author.

Period of performances.

6. The manager shall cause the said play to be first produced on [*date*] at the said X. Theatre, and shall continue the performance thereof there from that date at the rate of six [morning] performances per week [including Saturdays] for twenty consecutive weeks and for such further time as the author and manager may agree; but if the nett receipts for any one week at any time fall below £1,500, either party may, by one week's notice in writing to the other, terminate the adventure, and the run of the play shall thereupon be stopped.

Profits.

7. The author and the manager shall be entitled to the nett profits of the said adventure in the shares following, that is to say, the author to one-fourth and the manager three-fourths thereof, and they shall contribute to losses (if any) in like proportions.

Management.

8. The manager shall be the business manager for the

Form 24.

purpose of the said adventure, and the play shall be produced under the direction of the author, and all advertisements and announcements of the performance of the said play shall contain statements to that effect.

Advertisement.

9. THE said play shall be advertised in such manner as the parties hereto from time to time shall jointly determine.

Book of words.

10. THE author shall have the right of publishing a book of words of the play for sale in the said theatre at the price of 1*s.* per copy, and all profits arising from the sale thereof shall belong absolutely to the author.[1]

IN WITNESS, &c.

Form 25. AGREEMENT BETWEEN FARMER AND MILK DEALER FOR SUPPLY OF MILK.

Parties.

1. AN AGREEMENT made, &c. [*date*], between A. B., of, &c., of the one part, and C. D., of, &c., of the other part.

Agreement.

2. A. B. shall sell and deliver to C. D., who shall purchase and accept from him during the continuance of this agreement and upon the terms thereof such quantity of cows' milk as hereinafter mentioned.

Quantity.

3. THE quantity of milk shall be at least 10 dozen quarts each day during the winter season—namely, from the [*date*] to the [*date*], and at least 14 dozen quarts each day during summer season (namely, the remaining part of the year).

Place and time of delivery.

4. THE milk shall be delivered at X. during the winter season at 7 o'clock every morning (weather permitting), and during the summer season one half at 6 o'clock every morning and the other half at 4 o'clock every afternoon.

Price.

5. C. D. shall pay to A. B. for the above quantities of milk at the rate of 2*s.* 4*d.* for every dozen quarts during the winter season, and 2*s.* for every dozen quarts during the summer season, and at the same rates for every additional quantity which C. D. may accept.

Payments.

6. THE milk supplied during each week shall be paid for on Wednesday in the next week, and if default be made in such payment A. B. may discontinue to supply any more milk.[2]

[1] An arbitration clause may be added. See Form 9, § 16, p. 215.

[2] *Or*, Accounts for the milk shall be made up to and including Sunday in each week, and the amount shown as due by such account shall be paid on the following Tuesday fortnight.

Form 25.

7. The agreement shall determine by the death of either party, or by either party giving to the other 3 weeks' previous notice in writing for that purpose. Determination.

As witness, &c.

Form 26.

Agreement for Building an Organ.

1. An Agreement made, &c. [*date*], between A. B., of, &c., of the one part, and C. D., of, &c., of the other part. Parties.

2. In consideration of the payments hereinafter provided, A. B. hereby agrees with C. D. as follows:— Duties of builder.

(a.) On or before the 28th of November, 1897, to the satisfaction of C. D., to erect, complete, finish, and fix in the chamber above the vestry in the church of St. X., in the city of Y., the several organs and works described in the schedule hereto.

(b.) To keep the organs and works in repair and working order for 6 calendar months after the same shall have been completed and fixed.

(c.) At the end of such 6 calendar months to tune the organs and see that they and the other works are in working order.

3. In consideration of the premises C. D. hereby agrees with A. B. as follows:— Liabilities of purchaser.

(a.) To pay to A. B. £180 on the 28th of November, 1897, if the organs and works shall be erected, finished and fixed on or before that day to C. D.'s satisfaction.

(b.) To provide the case for the organs, but not the front pipes.

(c.) To pay to A. B. the further sum of £200 on the 31st of May, 1898, if A. B. shall on or before that day have performed all the stipulations on his part hereinbefore contained.

As witness, &c.

The Schedule above referred to.

Form 27. AGREEMENT (DETERMINABLE ON NOTICE) FOR USE BY RAILWAY COMPANY OF A RIGHT OF WAY ON PAYING THEREFOR A YEARLY SUM.

Parties. 1. AN AGREEMENT made [*date*] between A., of, &c., of the one part, and the X. Railway Company of the other part.

Consent to user of way. 2. THE said A. (hereinafter called "the Landowner") hereby consents to the X. Railway Company (hereinafter called "the Company") and its assigns, tenants and occupiers for the time being of the land edged blue on the plan drawn hereon, or the buildings for the time being thereon going and returning along and over the strip of land edged red on the said plan (of which the landowner is tenant for life) for all purposes connected with the use and occupation of the same land and buildings (but not otherwise), with or without horses and other animals, carts, carriages, or waggons laden or unladen.

Consideration. 3. THE company shall pay to the landowner the yearly sum of 10*s*., payable in advance, on every [*date*], the first of such payments to be made on the [*date*], for every year or portion of a year during which the present agreement shall continue.

Power to determine. 4. THIS agreement may be determined at any time by the landowner or the company giving to the other of them 3 calendar months' previous notice in writing of intention to determine the same.

AS WITNESS, &c.

Form 28. AGREEMENT FOR RELEASING AN ANNUITY CHARGED ON REAL ESTATE.

Parties. 1. AN AGREEMENT made [*date*], between A. B., of, &c., of the one part, and C. D., of, &c., of the other part.

Will charging annuities. 2. WHEREAS E. F., late of, &c., duly made her will, dated, &c., and thereby devised her real estate called X., in the parish of Y., in the county of Z., to the said A. B. in fee simple, charged with the payment of the sum of £1 per week to the said C. D. during her life.

Death and probate. 3. AND WHEREAS the said E. F. died on [*date*], and her said

will was, on the [*date*], duly proved by the executors therein named. **Form 28.**

4. And whereas the said A. B. is desirous of selling the said estate. Desire to sell.

5. Now, it is hereby agreed as follows:— Testatum.

6. The said C. D. will, when required by, and at the cost of the said A. B., and upon the said A. B. complying with clause 7 hereof, join in the conveyance or conveyances of the said estate to the purchaser or purchasers thereof, or release the said estate from the said annuity. Agreement of annuitant to concur in conveyances.

7. The said A. B. will, at his own cost, concurrently with the execution of such conveyance or release as aforesaid, execute and give to the said C. D. his bond in the penal sum of £900, conditioned to be void on payment to the said C. D. during her life of the weekly sum of £1, to commence from the date of the said bond; and will at the same time pay all arrears of the said annuity up to the date of the said bond[1] [and will also at the same time deposit in the X. Bank, at Y. aforesaid, in the names of G. H. and I. K., of, &c., £450, as a further security for the due payment of such annuity. Bond and deposit to secure annuity.

8. The said £450, when deposited, shall, together with all interest thereon, remain in the said bank until default shall be made in payment of the said annuity, and thereupon the said G. H. and I. K., or the survivor of them, or the executors or administrators of such survivor, shall, at the request of the said C. D., either pay the said annuity and all arrears thereout, or pay the arrears out of the interest thereof, if sufficient, and invest the said sum of £450, or a sufficient part thereof, in the purchase, in the name of the said C. D., of a Government annuity for her life of £1 per week, and pay the residue (if any) of the said £450 and interest (after deducting all expenses incurred by such payment or purchase as aforesaid) to the said A. B. Deposit.

9. The said £450 so to be deposited as aforesaid shall in no way prejudice the right of the said C. D. under the said Rights reserved.

[1] Instead of the provisions from this point to the end of clause 9, it might be provided that A. B. would, at any time at the request of C. D., purchase a government annuity in her name, and that the bond should thereupon be cancelled. Or the condition of the bond might be for due payment of the annuity, *or* purchase of a government annuity.

Form 28. bond, and nothing herein contained shall prejudice the right of the said C. D. against the real estate, until the whole of the arrangements hereby contemplated shall be carried out.]

Costs. 10. All the costs of the said C. D. of and incidental to the said arrangement shall be paid by the said A. B.

As witness, &c.

Form 29. Agreement for Reference of Disputes as to Damage by Mining Operations.

Parties. 1. An Agreement made [*date*], between A. B. of, &c., of the one part and C. D., of, &c., of the other part.

Dispute. 2. Whereas the said A. B. alleges, and the said C. D. denies, that the messuages, land and outbuildings belonging to the said A. B., situate at X., in the parish of Y., and known as Z., have been shaken, sunk, and cracked through the mining operations of the said C. D., and also that minerals in, under and adjoining to the said messuages, land and outbuildings belonging to the said A. B. have been worked and taken by the said C. D.

Testatum. 3. Now it is hereby declared that, in order to finally settle the questions in dispute between them, the said A. B. and C. D. hereby refer all questions and disputes in reference to the matters aforesaid to the arbitrament of E. F., of, &c., upon the terms following:—

Powers of arbitrator. 4. The said E. F. shall view the said messuages, land and outbuildings, and inspect such plans of the workings of the mines of the said C. D. in the said parish of Y., and examine such witnesses upon oath as he shall think proper, and shall afterwards make his award in writing under his hand, by which he shall determine what (if any) damage has been caused to the said messuages, land and outbuildings, through the mining operations of the said C. D., and what (if any) damages shall be paid in respect thereof, and whether any minerals belonging to the said A. B. have been gotten by the said C. D., and what sum (if any) the said A. B. shall receive as the value of the minerals (if any) so gotten, and shall fix the time when the said C. D. shall pay all (if any) sums thereby directed to be paid to the said A. B., and such award shall be binding on the said A. B. and C. D.

Facilities to arbitrator. 5. The said A. B. and C. D. shall afford every facility to

the said E. F. for conducting his said view and examination, and shall submit themselves and their workmen for examination and produce their plans at such time as the said E. F. shall require [but he shall not be attended by counsel or solicitors.] Form 29.

6. The said E. F. shall publish his award on or before [*date*], or within such extended time, not exceeding one calendar month after that day, as he shall by writing under his hand appoint. Time for award.

7. The costs and expenses of and incidental to this agreement, and of the reference and of the award, shall be paid by such of the parties hereto as the said E. F. shall award. Costs.

As witness, &c.

Agreement for Reference of an Action. Form 30.

1. An Agreement made [*date*], between A. B., of, &c., of the one part, and C. D., of, &c., of the other part. Parties.

2. Whereas on the [*date*], the said A. B. commenced an action in the Queen's Bench Division of the High Court of Justice against the said C. D. to recover the sum of £500. Action.

3. And whereas the said C. D. claims a set-off in the said action, amounting to the sum of £300. Set-off.

4. Now, in order to end all differences between them, the said A. B. and C. D. hereby agree as follows:— Testatum.

5. The said action and set-off, and all other matters in difference between the said A. B. and C. D. are hereby referred to E. F., of, &c., who shall make his award on or before the [*date*], or such further time, not later than three months from the date hereof, as he shall by writing indorsed hereon appoint. Reference.

6. The said A. B. shall, within seven days from this date, deliver to the said C. D. and E. F. an account in writing of all the items of his claim; and within seven days after receipt thereof the said C. D. shall deliver to the said A. B. and E. F. an account in writing of all the items of the set-off claimed by him, and in case of default by either party, the arbitrator shall be at liberty to proceed as if the party making such default had abandoned his claim or set-off, as the case may be. Delivery of claim, &c.

7. The said A. B. and C. D., and their respective wit- Witnesses.

Form 30.

nesses, shall be examined on oath before the said arbitrator, and shall produce all books and papers relating to the matters aforesaid in their possession.

Default.

8. If either party shall make default in attending any appointment made by the arbitrator, he shall be at liberty to proceed *ex parte* as effectually as if such absent party were present.

Costs.

9. The costs of the action shall abide the event of the award, and each party shall pay his own costs of this agreement, but the costs of the reference and award shall be in the discretion of the arbitrator, who may award by and to whom any costs are to be paid.

As witness, &c.

Form 31.

Agreement for Hire of Furniture and Fittings in Hotel. Option to Purchase at a nominal price. Rent secured by Promissory Notes.[1]

Parties.

1. An Agreement made [*date*], between A. B. and C. D., both of, &c., hotel keepers (hereinafter called "the landlords"), of the one part, and E. F. of, &c., hotel proprietor (hereinafter called "the tenant"), of the other part.

Sale of business to tenant.

2. Whereas the landlords have for some years past carried on the business of hotel proprietors at the X. Hotel aforesaid, and they have recently sold the said business to the tenant and have, by an indenture of even date with, but executed before the signature of, this agreement, granted to the tenant a lease of the said hotel and the appurtenances thereto.

Furniture belongs to landlord.

3. And whereas the several articles of furniture and effects specified in the schedule hereto (which are now in or about the said hotel, and are hereinafter called "the scheduled articles"), belong to the landlords, and are hereby admitted to be of such a value that the amount thereof if paid by instalments extending over twelve years with interest thereon would amount in the aggregate to £4,000.

[1] This agreement will be valid even in the event of the bankruptcy of the tenant, there being a custom in the trade for hotel keepers to hire furniture. *Crawcour* v. *Salter*, 18 Ch. D. 419. But see *Ex parte Brooks*, 23 Ch. D. 261. It should be stamped as a lease.

Form 31.

4. And whereas on the treaty for the sale of the said business, it was agreed that the parties hereto should enter into such arrangements as are hereinafter contained.

Agreement on sale of business.

5. Now it is hereby agreed as follows:—

Testatum.

6. In consideration of the sum of £400 paid by the tenant to the landlords on or before the signature hereof, and of the instalments to be paid by him as hereinafter mentioned, the landlords hereby let and the tenant hereby hires the scheduled articles for a term of twelve years from the [*date*] (determinable as hereinafter mentioned), upon the terms and conditions hereinafter mentioned.

Agreement for hire of furniture for twelve years.

7. The tenant shall pay to the landlords, by way of rent for the scheduled articles (in addition to the said sum of £400 paid by him as aforesaid), the sum of £300 on the [*date*], in every year during the continuance of this agreement, the first of such payments to be made on the [*date*].

Rent for furniture.

8. The tenant shall also, immediately after the signature hereof, deposit with the landlords promissory notes for the total amount of the instalments to be paid hereunder, such promissory notes being collateral security and entirely without prejudice to the title of the landlords in or to the scheduled articles, and to all rights hereby reserved to them, and subject to the stipulation that, in case of the scheduled articles being seized and removed by the landlords under clause 10 hereof, the whole of such promissory notes, or so many of them as shall then be current, shall, after such seizure and removal, be given up, on demand, to the tenant, and shall from such seizure and removal be void.

Promissory notes to be given.

9. The tenant shall keep the rent of the said hotel, or other the premises in which the scheduled articles shall for the time being be placed, regularly and punctually paid, and shall not part with the possession of, or remove (except for purpose of necessary repair), or otherwise deal with the scheduled articles or any part thereof, or part with the possession of, or assign his interest in, the premises wherein the same shall for the time being be without the previous consent in writing of the landlords, and in the event of removal for necessary repairs shall immediately upon the completion of such repairs replace the articles so removed.

Tenant to pay rent of hotel, and not to remove furniture.

10. In the event of the non-payment of any of the instalments mentioned in clause 7 hereof, or of any of the said

Events on which landlords may

Form 31.

take possession.

promissory notes, on the days upon which they respectively become due, or of any breach by the tenant of any of the conditions herein contained, or in the event of the scheduled articles or any part thereof being seized or taken in execution under any execution or legal process of any Court, the term hereby created shall immediately thereupon determine, and the landlords may personally or by their agents enter into any place where the scheduled articles or any part thereof may then be, and may seize, remove, and retake possession thereof, notwithstanding any payments in respect thereof previously made by the tenant, and the tenant shall not commence or be capable of maintaining any action or other legal proceeding in respect of such seizure, removal, or taking of possession or of the temporary occupation or possession by the landlords of the premises wherein the scheduled articles may then be, for such time as may be reasonably occupied in such seizure, removal, and taking of possession.

Forfeiture of instalments.

11. In the event of the landlords being entitled to take and taking possession of the scheduled articles under the preceding clause hereof, all moneys which shall then have been paid by the tenant shall be absolutely forfeited to the landlords, and no portion thereof shall be recoverable by the tenant.

Option to tenant to buy furniture.

12. If the tenant shall pay to the landlords, by such instalments as aforesaid, such sums as, together with the sum of £400 already paid by him as aforesaid, shall amount to the sum of £4,000, he shall be at liberty to purchase the whole of the scheduled articles for the further sum of £5, upon giving notice to the landlords of his intention so to do within three calendar months after the sums so paid by him as aforesaid shall have amounted to the said sum of £4,000, and upon payment to them of the said additional sum of £5.

Furniture to belong to landlords till full payment.

13. Until the whole of the said sums of £4,000 and £5 shall have been paid by the tenant, the scheduled articles shall be and remain the sole and absolute property of the landlords, and are only let on hire by them to the tenant, but immediately after the whole of such sums shall have been fully paid, and such notice as aforesaid shall have been given, the scheduled articles shall become the sole and absolute property of the tenant.

Form 31.

14. The tenant shall, during the continuance of this agreement, take all proper and reasonable care of the scheduled articles, and shall keep the same in good and substantial repair, and shall keep the same insured in the names of the landlords in a sum not less than £4,000, and pay all sums necessary to keep up such insurance, and shall, if and when required, produce to the landlords the policy of such insurance, and the receipt for the last premium for the time being payable in respect of the same. Tenant to repair and insure furniture.

As witness, &c.

The Schedule above referred to.

Form 32.

Agreement for hire of Pottery Plant, and Machinery belonging to Lessors of a Pottery. Option for Hirers to purchase at a Nominal Price.[1]

1. An Agreement made [*date*], between A. B., of, &c., and C. D. of, &c. (hereinafter called "the owners"), of the one part, and E. F. and G. H., both of, &c. (hereinafter called "the hirers"), of the other part. Parties.

2. Whereas the owners have for some years past carried on the business of manufacturers of stoneware drain-pipes, chimney pots, and similar articles upon freehold and leasehold hereditaments, known as the X potteries, and they, by indentures of even date with, but executed before, the signature hereof, granted to the hirers a lease of part, and assigned to them their rights under an agreement for a lease of the remaining part of the said potteries. Lease of even date to hirers.

3. And whereas the several tools, utensils, and other articles specified in the schedule hereto (and hereinafter called "the scheduled articles") which are now in or about the said potteries belong to the owners, and are hereby admitted to be of the value of £ . Scheduled articles belong to owners.

4. And whereas upon the treaty for the said lease, it was agreed that the parties hereto should enter into such arrangements as are hereinafter contained with regard to the scheduled articles. Agreement as to scheduled articles.

[1] This agreement was sanctioned by the Chancery Division in an administration action.

Form 32.

Testatum.

5. Now this Agreement witnesses as follows:—

Scheduled articles let on hire.

6. In consideration of the instalments to be paid as hereinafter provided, the owners hereby let, and the hirers hereby hire, the scheduled articles for a term of years from the [*date*], or until this agreement shall be determined or completed as hereinafter mentioned.

Rent.

7. The hirers shall pay to the owners by way of rent for the scheduled articles, during the continuance of this agreement, the annual sum of £ to be paid as follows:—the first payment to be the sum of £ , and to be paid on the [*date*] in respect of the half-year from the [*date*] to the day of payment, and all subsequent payments to be equal quarterly payments, and to be made upon the 25th of March, the 24th of June, the 29th of September, and the 25th of December in each year, the first of such quarterly payments to be made on the 25th of March, 18 .

Promissory notes for rent to be given.

8. The hirers shall also, immediately after the signature hereof [*continue as in* § 8 *of Form* 31].

Hirers to keep rent of pottery paid.

9. The hirers shall keep the rent [*continue as in* § 9 *of Form* 31].

Hirers to repair and insure scheduled articles.

10. The hirers shall [*continue as in* § 14 *of Form* 31].

Owners may enter, view, and give notice to repair.

11. The owners or their agents may, at all reasonable times, enter and view the scheduled articles and give notice in writing of any defects or want of repair therein, and the hirers shall, within fourteen days after the service of such notice, remedy such defects or replace the articles which shall be defective by similar new articles. The posting (as a registered letter) of such notice addressed to the hirers at the said potteries shall be sufficient service thereof.

Owners may take possession on default.

12. In the event of the non-payment [*continue as in* § 10 *of Form* 31].

Forfeiture of instalments on default.

13. In the event of the owners being entitled to take and taking possession of the scheduled articles under the preceding clause hereof, all moneys which shall then have been paid by the hirer shall be absolutely forfeited to the owners, and no portion thereof shall be recoverable by the hirers.

Hirers may purchase.

14. If and whenever the hirers shall have paid to the owners by such instalments as aforesaid, or by any larger payments during the continuance of this agreement, such sums as shall amount in the aggregate to £——, they shall thereupon be at liberty to purchase the whole of the

scheduled articles upon giving notice to the owners of their intention so to do within three calendar months after the sums so paid by them as aforesaid shall have amounted to the said sum of £——, and upon payment to them of such further sum as is provided for by clause 15 hereof. Upon such notice and payment, the owners will accept the said sum of £——, and such further sum as aforesaid, as purchase-money for the scheduled articles, and this agreement shall thereupon be completed and shall thenceforth cease and determine, and the scheduled articles shall thereupon become the absolute property of the hirers. Form 32.

15. The further sum payable by the hirers, upon giving notice under clause 14 hereof, shall, if such notice be given at the end of the said term of —— years, be the sum of £10, but shall, if such notice be given before the end of the said term, be such sum as shall be equal to interest at 5 per cent. per annum on the said sum of £—— from the date hereof to the date of such notice. Amount to be paid on purchase.

16. Until the whole of the said sum of £——, and such further sum as may be payable by virtue of clauses 14 and 15 hereof, shall have been paid by the hirers, the scheduled articles shall be and remain the sole and absolute property of the owners, and are only let on hire by them to the hirers. Scheduled articles remain owners' property.

As witness, &c.

The Schedule above referred to.

[*Insert inventory of plant and tools*].

Agreement for Hire of Trade Machinery with Option of Purchase at a Nominal Price.[1] Form 33.

1. An Agreement made [*date*] between W., of, &c. (hereinafter called "the owner"), of the one part, and Y., of, &c. (hereinafter called "the hirer"), of the other part. Parties.

[1] This agreement was supported against the trustee in bankruptcy of the hirer in *Re Yarrow*, 38 W. R. 175. But such an agreement will not be supported if the Court comes to the conclusion that the transaction is not a *bonâ fide* purchase and letting on hire by the

Form 33.

Business of hirer.

2. WHEREAS the hirer has for some time past carried on business in partnership with Z. as a steam saw miller at X., and such partnership having recently been dissolved, the hirer is about to continue a similar business on his own account at the same place.

Purchase by owner.

3. AND WHEREAS upon the dissolution of the said partnership the several articles and effects specified in the schedule hereto, which were formerly the property of the said partnership, and are now in or about the said saw-mills, were purchased by and are now the property of the owner, and are hereby [*continue as in* § 3 *of Form* 31].

Introductory.

4. AND WHEREAS on the treaty for the continuance of the said business by the said Y. it was [*continue as in* § 4 *of Form* 32].

Testatum.

5. NOW IT IS HEREBY AGREED as follows :—

Scheduled articles let on hire.

6. IN CONSIDERATION of the instalments to be paid as hereinafter provided, the owner hereby lets, and the hirer hereby hires, the scheduled articles [*continue as in* § 6 *of Form* 32].

Rent.

7. THE hirer shall pay to the owner, by way of rent for the scheduled articles, the sum of £—— on the [*date*], and the [*date*], in every year during the continuance of this agreement, the first of such payments to be made on the [*date*].

Hirer to keep rent of works paid.

8. THE hirer shall keep the rent [*continue as in* § 9 *of Form* 31].

Owner may take possession on default.

9. IN the event [*continue as in* § 10 *of Form* 31].

10. IN the event [*continue as in* § 13 *of Form* 32].

Forfeiture of instalments on default.

11. IF and whenever the hirer shall pay to the owner by such instalments, or by any larger payments, prior to the

owner, but is, in substance, a loan on the security of chattels really belonging to the hirer. *Re Watson*, 25 Q. B. D. 27; *Madell* v. *Thomas & Co.*, (1891) 1 Q. B. 230. Plates bearing the name of the owner should be fixed to the machines. See and consider *Manchester, &c. Ry. Co.* v. *North Central Waggon Co.*, 13 Ap. Ca. 554; and *Beckett* v. *Tower Assets Co., Limtd.*, (1891) 1 Q. B. 1. See also *Ramsay* v. *Margrett*, (1894) 2 Q. B. 18; *Shenstone* v. *Hilton*, (1894) 2 Q. B. 452; *Lee* v. *Bulter*, (1893) 2 Q. B. 318; *McEntire* v. *Crossley Bros.*, (1895) Ap. Ca. 457; *Helby* v. *Matthews*, (1895) App. Ca. 471; *Payne* v. *Wilson*, (1895) 2 Q. B. 537; *Ex parte Byrne*, 25 Q. B. D. 116; *Ex parte Mason*, (1895) 1 Q. B. 333.

Form 33.

expiration of the said period of ten years, such sums as shall amount to the sum of £——, he shall be at liberty to purchase the whole of the scheduled articles for the further sum of £5, upon giving notice to the owner of his intention so to do within one calendar month after the sum so paid by him as aforesaid shall have amounted to the said sum of £——, and upon payment to him of the said additional sum of £5.

Hirer may purchase.

12. Until the whole of [*continue as in* § 13 *of Form* 31].

13. The hirer shall [*continue as in* § 14 *of Form* 31].

As witness, &c.

Scheduled articles belong to owner.

Hirer to repair and insure.

The Schedule above referred to.

[*Insert inventory of articles lent on hire.*]

Form 34.

Conditional Agreement (subject to the Sanction of the Chancery Division) for Sale by Administratrix of an Intestate's Share in a Business to his Partners, who are also two of his Next-of-kin.

1. An Agreement made [*date*] between C. B., of, &c. (hereinafter called "the vendor"), of the one part, and A. B. and D. B., of, &c. (hereinafter called "the purchasers"), of the other part.

Parties.

2. Whereas A. B. the elder, late of, &c. (the husband of the vendor, and the father of the purchasers), for many years prior and up to his death carried on the business of a florist and nurseryman in partnership with his sons, the purchasers, at, &c., under the style of "B. & Sons," each of the said partners being entitled to one equal third share of and in the said business, and the capital, stock-in-trade, goodwill, and profits thereof.

Recital as to business.

3. And whereas the said A. B. the elder (hereinafter called "the intestate") died intestate on [*date*], and letters of administration to his estate and effects were on [*date*] granted to the vendor.

Recital as to intestacy, &c.

4. And whereas since the death of the intestate the purchasers have carried on the said business for the benefit of themselves and the vendor, and the nett profits of the said business for the six months ending the [*date*] are estimated

Business carried on since death.

Form 34.

at £——, of which £—— is the share of the vendor, as such administratrix as aforesaid.

Testatum.

5. Now it is hereby agreed as follows:—

Price.

6. The vendor shall sell, and the purchasers shall buy, at the price of £——, the one equal third share of the intestate of and in the said business as on the [*date*], and the goodwill thereof, and the stock-in-trade, plants, greenhouses, conservatories, heating apparatus, pipes, stoves, boilers, fixtures, utensils, moneys, bills, debts, agreements for tenancies, and all other effects belonging to the said partnership business, and all contracts and engagements entered into by the said partners at the time of the decease of the intestate.

Terms of payment.

7. The said sum of £—— shall be paid by the purchasers to the vendor in cash within seven days after this agreement shall have been sanctioned as hereinafter provided, and upon payment thereof the purchasers shall be entitled to the whole of the profits of the said business from the [*date*].

Assignment to be executed.

8. Upon payment of the said sum of £—— at the time aforesaid, the vendor will execute and deliver to the purchasers a proper assurance of the said one equal third part or share of the intestate of and in the said partnership business, and shall also execute and deliver to them an assignment of the lease of the said nurseries in the X. Road, such assurances to be prepared by and at the expense of the purchasers, who shall also bear all costs connected with the execution thereof by the vendor. The purchasers shall execute such assurance in duplicate, and shall thereby covenant to pay the debts due from the said business, and to indemnify the vendor and the estate of the intestate therefrom.

Title to be accepted.

9. The purchasers shall accept such title as the vendor has to the intestate's share in the said business, including the said nurseries, and shall make no objection or requisition in respect thereof.

Provision for default.

10. If the purchasers shall fail to pay the said purchase-money at the time aforesaid, or otherwise to comply with the above conditions, the vendor shall be at liberty to resell the premises at such time, in such manner, and subject to such conditions as the vendor shall think fit; and any deficiency in price which may happen upon and all expenses attending the re-sale shall immediately afterwards be paid by the

purchasers to the vendor, and in case of non-payment shall be recoverable by the vendor as liquidated damages. Form 34.

11. This agreement is conditional upon the sanction thereof by Her Majesty's High Court of Justice; and the vendor shall forthwith take all necessary and proper steps to obtain such sanction. If the same shall not be sanctioned, with or without modification, within six calendar months from the date hereof, the same shall thereupon be absolutely void; and if the same shall be sanctioned subject to any modifications, such modifications shall be deemed to be incorporated herein and be binding upon all parties [unless the purchasers shall, within seven days after such sanction, give notice in writing to the vendor that they object to such modifications, in which event this agreement shall thereupon be void]. Sanction of Court to be obtained.

12. The costs as between solicitor and client of and incidental to the negotiation for, preparation, execution, and sanction of this agreement shall be paid [by the vendor out of the intestate's estate]. Costs.

As witness, &c.

Agreement by Executrix and Creditors of an Insolvent Deceased Tradesman for Sale of his Business to a Manager, Purchase-money payable by Instalments.—Assignment to Trustees, under whose Inspection Business is to be carried on until Payment.[1] Form 35.

1. This Indenture made [*date*] between A. B., of, &c., widow, of the first part, C. D., of, &c., of the second part, E. F., of, &c., G. H., of, &c., and I. K., of, &c., of the third part, and the several persons named in the second schedule hereto (hereinafter called "the creditors") of the fourth part. Parties.

2. Whereas T. B., late of, &c., for some time prior to and at his death carried on business as a ——, under the style of "B. & Co.," at the leasehold warehouse and offices situate at X. aforesaid, described in the first schedule hereto, which were at his death vested in him for an unexpired term Testator's business.

[1] This agreement is a deed of arrangement, and requires registration under the Deeds of Arrangement Act, 1887.

Form 35.

of seventeen years from the [*date*], and he was then entitled to the goodwill of the said business, and the stock-in-trade, assets, and other effects thereof.

Death, and legal personal representative of testator.

3. And whereas the said T. B. died on [*date*], having duly made his last will, dated [*date*], whereby he appointed his widow, the said A. B., sole executrix thereof, and she has duly proved the same.

Testator's indebtedness.

4. And whereas the said T. B. was at his death, and his estate is now, indebted to the creditors in the several sums placed opposite to their respective names in the 2nd schedule hereto, and the said A. B. is unable to pay the same, or to provide for the payment thereof in full, otherwise than by a sale of the said business as a going concern.

Offer by C. D. to buy business.

5. And whereas the said C. D. has offered to purchase the said business and the goodwill, book debts, and other assets thereof, including the said leasehold premises, and as the consideration for the said purchase to pay to the creditors the several sums owing to them as aforesaid by such instalments as are hereinafter mentioned, and also to pay the said A. B. the sum of £500 by the like instalments, and has proposed that the payment of the said instalments shall be provided for in manner hereinafter appearing.

Offer accepted.

6. And whereas the creditors have agreed to concur in the said arrangement, and to accept payment of their respective debts by such instalments as aforesaid, and to execute such release as is hereinafter contained.

Assignment of lease to C. D.

7. And whereas in pursuance of the said arrangement, the said A. B. has, with the approbation of the creditors, by an indenture bearing even date herewith, but executed before the execution hereof, assigned the said leasehold premises to the said C. D.

Agreement as to business.

8. And whereas it has been agreed that in order to secure such payment as aforesaid, the said A. B. shall assign the said business, and the goodwill, book debts, credits, and effects thereof to the trustees, and that they shall from and after such assignment hold the same upon the trusts, with the powers, for the purposes, and subject to the provisions hereinafter mentioned.

Assignment of business to trustees.

9. Now this Indenture witnesseth that in pursuance of the said arrangement and in consideration of the premises, and of the covenant and release hereinafter contained, the

Form 35.

said A. B., at the request of the said C. D., hereby assigns unto the said E. F., G. H., and I. K., the said business of a warehouseman, heretofore carried on at X. aforesaid, under the style of "B. & Co.," together with the goodwill thereof, including the exclusive right to use and trade under the style of "B. & Co.," and also the book debts, credits, and effects thereof or belonging thereto, To HOLD the same unto the said E. F., G. H., and I. K., their executors, administrators, and assigns, upon, for, with and subject to the trusts, powers, and provisions hereinafter contained.

Covenant by C. D. to pay purchase-money by instalments.

10. AND THIS INDENTURE ALSO WITNESSETH that in further pursuance of the said arrangement and in consideration of the assignment aforesaid, and the provisions hereinafter contained, the said C. D. hereby covenants with the trustees, and separately with the said A. B. and with the creditors respectively, that he will pay to the said E. F., G. H., and I. K., for distribution to the creditors respectively, the several sums placed opposite to their respective names in the 2nd schedule hereto by five equal instalments on the days following, that is to say, the —th of ——, the —th of ——, the —th of ——, the —th of ——, and the —th of ——, in full satisfaction and discharge thereof, and that he will also pay to the said A. B. the sum of £500 by five equal instalments on the days aforesaid, and that he will forthwith pay to the trustees, or as they shall direct, all costs and expenses of and incidental to the preparation and execution by all parties of this indenture.

Release of testator's estate and executrix.

11. AND THIS INDENTURE ALSO WITNESSETH that in further pursuance of the said arrangement and in consideration of the premises, the creditors hereby respectively release the said A. B., her executors, administrators, and assigns, and the estate and effects of the said T. B., deceased, from the debts and sums of money specified in the 2nd schedule hereto, and from all (if any) other debts and sums due from the said T. B. to them respectively, and from all actions, proceedings, claims, and demands in respect thereof.

Special provisions.

12. AND THIS INDENTURE ALSO WITNESSETH, and it is hereby agreed and declared as follows:—

Inspectorship.

(*a*) The said E. F., G. H., and I. K., and the survivors and survivor of them, or other the trustees or trustee for the time being of this indenture (all of whom are hereinbefore

Form 35.

and hereinafter called "the trustees"), shall permit the said C. D. to manage and carry on the said business, and to deal with the property hereby assigned for the purposes of the said business as the trustees shall think proper, but subject to the control and under the inspection and superintendence of the trustees until the said instalments shall be fully paid, or until the said trustees shall wind up the said business under clause (k) hereof.

Trusts of business.

(*b*) If and whenever the said C. D. shall have duly paid, either by the instalments aforesaid or otherwise, the several sums specified in the 2nd schedule hereto, and the said sum of £500, and the said costs and expenses, and shall also pay or indemnify the trustees against all costs, expenses, and liability incurred by them hereunder, the trustees shall thereupon, at the request and cost of the said C. D., assign and transfer the goodwill, credits, and effects of the said business, and all other the property hereby assigned, or so much thereof as shall remain undisposed of, unto the said C. D. or as he shall direct, and he shall thenceforth be entitled to the same for his own benefit discharged and released from all the trusts, powers and provisions of this indenture, and from all claims and demands by the trustees and the creditors, or any of them, and from all liability in respect of the several sums aforesaid, and subject to such payment as aforesaid, and to the provisions hereof, the trustee shall in the meantime hold the said business and property in trust for the said C. D.

Management.

(*c*) Until such payment as aforesaid or until the said business shall be wound up under clause (k) hereof (which period is hereinafter called "the inspectorship"), the said C. D. shall carry on the said business to the best of his skill and ability under the superintendence and according to the direction of the trustees, and use his best endeavours to make the same profitable, and to obtain possession of and realise all the book debts, credits and effects thereof, and shall draw, accept, and indorse all such bills, cheques and promissory notes as the trustees shall require.

Accounts to be kept.

(*d*) The said C. D. shall, during the inspectorship, keep proper books of account, containing proper entries of all his receipts and disbursements, and other things necessary or convenient for showing the true state and condition of the said business, and shall preserve all letters received and

copies of all letters written by him, and other documents relating to the said business, and shall allow the trustees, or any accountant, or other persons or person appointed by them, free access to the several books of account, letters, copies of letters, and documents aforesaid.

Reports to trustees.

(*e*) The said C. D. shall, during the inspectorship, when required by the trustees, report to them the true state and condition of the said business, and all his proceedings relating thereto, and shall, upon all matters and questions involving doubt or requiring the exercise of discretion, apply to and act upon the advice of the trustees, and attend to and act upon the directions or suggestions of the trustees in relation to the premises.

Banking account.

(*f*) The said C. D. shall, during the inspectorship, if and when so required by the trustees, deposit in the Bank of X., or such other bank, and to such account as the trustees shall direct, all or any of the moneys, cheques, bills, promissory notes or securities, or the proceeds thereof, which he shall receive in the course of the said business.

No other business.

(*g*) The said C. D. shall not, during the inspectorship, without the written consent of the trustees, enter into or be directly or indirectly concerned or interested in any other business.

Salary and expenses.

(*h*) The said C. D. shall, during the inspectorship, out of any moneys which shall come to his hands in the management of the said business, retain and reimburse to himself, and allow and pay to the trustees all costs and expenses which he or they shall reasonably incur in the execution of the powers and provisions of this indenture, and shall be at liberty, so long as he shall perform his engagements hereunder, to retain thereout by way of salary, the sum of £2 per week.

Outgoings.

(*i*) The said C. D. shall also, out of such moneys as aforesaid, pay all rents, taxes, rates, and other outgoings (including insurance premiums) payable in respect of the said leasehold premises, and all salaries, allowances and wages to clerks and others employed by him in the said business and in managing the same.

Power to trustees to enter.

(*j*) If any of the said instalments shall not be duly paid or provided for to the satisfaction of the said trustees, or if the said C. D. shall neglect the said business, or shall not,

Form 35.

during the inspectorship, carry on the same to the satisfaction of the trustees, the trustees may, at their discretion, enter and take possession of the same, and thenceforth carry on the same, either themselves or by any manager whom they may appoint to the entire or partial exclusion of the said C. D. during the rest of the inspectorship, and may do or cause to be done all things necessary or convenient for the carrying on of the said business.

And to sell.

(*k*) If any of the said instalments shall not be duly paid or provided for to the satisfaction of the trustees, or if it shall appear to them from the state or position of the said business that any such instalment will not be duly met or provided for, or if the said C. D. shall neglect the said business, or shall not, during the inspectorship, carry on the same to the satisfaction of the trustees, the trustees may take possession of and wind up the said business, and get in, collect, and realize the same, and the assets and effects thereof by sale or otherwise in such manner in all respects as they may think fit.

Trust of lease in event of sale.

(*l*) If the trustees shall exercise the powers conferred upon them by clause (k) hereof, the said C. D. shall thenceforth stand possessed of the said leasehold premises in trust for the trustees, and to dispose of the same as they shall direct.

Payment of debts.

(*m*) The trustees shall, out of any moneys to come to their hands under clause (j) or (k) hereof, in the first place pay the costs and expenses of and incident to the carrying on or winding-up of the said business, including all debts incurred in carrying on or winding up the same under this indenture, and all other costs and expenses payable under this indenture, and in the next place apply the same in or towards payment of the then unpaid balance of the several sums specified in the 2nd schedule hereto, and the said sum of £500 *pro ratâ*, and shall pay the surplus (if any) of the said moneys to the said C. D.

Power to employ manager.

(*n*) The trustees may, in the events mentioned in clauses (j) and (k) hereof, employ any person or persons to assist in carrying on or winding up the said business, and realizing the same or the assets and effects thereof, and may pay to him or them such remuneration as the trustees shall think proper.

Power of attorney.

(*o*) The said A. B. and the said C. D. hereby respectively

appoint the trustees and each of them to be her and his attorney and attorneys in their respective names, and on their behalf respectively to execute, do, and concur in all such deeds, acts, and things as they shall think necessary or expedient for carrying on or winding up the said business or otherwise in the exercise of the powers hereby conferred upon the trustees.

Majority of trustees to bind.

(*p*) In case there shall be any difference of opinion among the trustees, the decision of the majority shall bind the minority, and all deeds, acts, and things executed or done by such majority shall be as effectual as if the same had been executed or done by all the trustees.

New trustees.

(*q*) A new trustee or new trustees of this indenture may be appointed in the events and by the persons specified in that behalf in § 10 of the Trustee Act, 1893.

Indemnity.

(*r*) The trustees shall be indemnified out of the moneys which shall come to their hands hereunder or by the creditors in proportion to their respective debts in respect of all transactions and personal engagements and liabilities which they shall enter into, incur, or sanction under the powers hereby conferred upon them, and the creditors shall ratify and confirm all that the trustees shall lawfully do hereunder, but so that no creditor shall under this clause be liable to pay or contribute a larger sum than he shall receive by way of dividend hereunder.

Indemnity.

(*s*) The trustees shall respectively be chargeable only for such moneys, stocks, funds, and securities as they shall respectively actually receive, notwithstanding their signing any receipt for the sake of conformity, and shall respectively be answerable only for their own respective acts, receipts, neglects, or defaults, and not for those of the others of them, nor for any banker, auctioneer, or other person with whom or into whose hands any moneys or securities may be deposited or come, nor for the insufficiency or deficiency of any stocks, funds, or securities, nor for any loss unless the same shall happen through their own wilful default respectively.

Restrictive covenant as to trading.

(*t*) The said C. D. shall not, in the event of a sale under clause (k), for the period of ten years from such sale, carry on or authorize, or assist any other person to carry on the business of a ——, under any style or firm of which the

Form 35. name B. shall form part, within twenty miles as the crow flies from the Royal Exchange in the city of London.

IN WITNESS, &c.

The 1st SCHEDULE above referred to.

[*Insert description of property.*]

The 2nd SCHEDULE above referred to.

[*Insert names of creditors and amounts owing to them respectively.*]

Form 36. AGREEMENT FOR THE LEASE OR UNDERLEASE OF A HOUSE—SHORT FORM.

Parties. 1. AN AGREEMENT made [*date*] between A. B., of, &c., of the one part, and C. D., of, &c., of the other part.

Agreement. 2. THE said A. B. agrees to grant and the said C. D. to take a lease of the messuage and outbuildings No. 9 in X. Street, as the same were late in the occupation of E. F. for seven years at £65 per annum, payable quarterly.

Cost of lease. 3. THE lease and a counterpart thereof shall be prepared and engrossed by the said A. B.'s solicitor at the said C. D.'s expense.

Title. [4. The said C. D. shall assume that the said A. B. has full power to grant the said lease, and shall not be entitled to any abstract of or to investigate or make any objection or requisition in respect of the title of the said A. B., or any prior or other title to the premises.[1]]

Covenants. 5. THE lease shall contain the following covenants by the lessee—to pay rent, land tax, sewers and main drainage rates, and all other outgoings (property tax and tithe rent charge excepted), to keep the premises fully insured against fire in £1,200, not to assign or underlet without lessor's

[1] This clause is only necessary in an agreement for an underlease. In granting any lease, the title to the *freehold* cannot be called for: see s. 2 (1) of the Vendor and Purchaser Act, 1874; and by s. 13 of the Conveyancing Act, 1881, the title to a *leasehold reversion* cannot be called for; but where an underlessee grants a derivative lease, this does not prevent investigation of the title of the lessee himself, who agrees to grant the underlease.

consent (but such consent not to be capriciously withheld), to keep the premises in good repair, and so to yield them up, and also all other usual[1] covenants and provisions [including covenants similar to those in the lease under which the said A. B. holds the premises]. Form 36.

As WITNESS, &c.

AGREEMENT FOR A MORTGAGE. Form 37.

1. AN AGREEMENT made [*date*] between A. B., of, &c., of the first part, C. D., of, &c., of the second part, and E. G., of, &c., of the third part. Parties.

2. WHEREAS the said A. B. alleges that under the will of H. L., late of, &c., deceased, dated, &c., he will, upon attaining the age of twenty-five years, become absolutely entitled in fee simple, free from incumbrances (except the annuities of, &c., amounting in all to the yearly sum of £240), to an undivided moiety of certain estates devised by the said will and therein described as all the testator's real estates called, &c., situate in, &c. Recital of title.

3. AND WHEREAS the said A. B. alleges that he is now twenty-three years of age. As to age.

4. AND WHEREAS the said A. B. also alleges that the said C. D. is now twenty-one years of age, and that he will become entitled to the other moiety of the same estates upon attaining the age of twenty-five years. As to ages.

5. AND WHEREAS the said E. G. has agreed, upon the said A. B. satisfying him as to the value and title of the said hereditaments, to lend the sum of £12,000 to the said A. B. upon the security of a mortgage of the said moiety and of such policy of assurance as hereinafter mentioned. As to agreement.

6. AND WHEREAS the said C. D. has agreed to join herein in manner hereinafter appearing: As to concurrence.

7. NOW IT IS HEREBY AGREED as follows:— Testatum.

8. THE said A. B. shall forthwith, at his own expense, deduce a good title to an undivided moiety of the hereditaments alleged to have been devised to him as aforesaid to the satisfaction of the solicitor of the said E. G.,[2] and procure Title.

[1] As to what are usual covenants, see p. 117, *ante*.

[2] As to this stipulation, see *Hudson* v. *Buck*, 7 Ch. D. 683.

Form 37.

a valuation thereof by such valuer as the said E. G. shall appoint.

Mortgage.

9. As soon as the title of the said A. B. to the said moiety shall have been approved of on behalf of the said E. G., the said A. B. and all other necessary parties (except the said annuitants) shall, upon the request of the said E. G., but at the cost of the said A. B., convey the said moiety to the use of the said E. G. in fee simple free from incumbrances (except the said annuities) by way of mortgage for securing the payment to him of £12,000 with interest thereon at the rate of £5 per cent. per annum; and the said mortgage shall contain such power of sale, and such covenants and clauses as the solicitor of the said E. G. shall reasonably require, including a clause charging the whole of the said annuities upon the lands known as "Northwood" and situate in the parish of X., whereof the said A. B. is seised in fee simple free from incumbrances, and reasonable provisions for exonerating (as between the parties hereto) the hereditaments devised to the said A. B. and C. D. as aforesaid from the said annuities and every part thereof, and for indemnifying and protecting the said E. G. and the entirety of the said hereditaments therefrom during the continuance of the said mortgage security.

Indemnity.

10. The said A. B. shall, if required, at his own expense, effect an assurance on his life, for indemnifying the said E. G. against all loss in the event of the death of the said A. B. under the age of twenty-five years, for £12,000 in the Z. Insurance Office, and the premiums in respect of such assurance shall be deducted from the amount of the proposed advance.

Loan.

11. The said E. G. shall, on the completion of the said mortgage, advance to the said A. B. £12,000, less the amount of such premiums as aforesaid.

Power to deposit loan.

12. At any time after the said [*date*], but before the completion of the said mortgage, the said E. G. shall be at liberty to pay the said £12,000, or any part thereof, into the X. bank to a deposit account in his own name, but at the risk of the said A. B.; and from the date of such payment (unless there shall be a delay in completion arising through the default of the said E. G. or his solicitor), the said A. B. shall pay to the said E. G. interest on the said sum of

£12,000, or so much thereof as shall be so paid in, at the rate of £5 per cent. per annum; and the said E. G. shall account to the said A. B. for all sums (if any) which he may receive from the said bank by way of interest thereon. Form 37.

13. If the said mortgage shall be completed, the said C. D. shall concur with the said A. B. in securing the interest of the said mortgage debt upon his moiety of the said hereditaments. Concurrence of C. D.

14. If the said mortgage shall not be completed on or before the [*date*], the said E. G. may, at any time thereafter, and notwithstanding any subsequent negotiations, by notice in writing rescind this agreement, and the said A. B. shall, whether the said mortgage shall be completed or not, pay all the costs incurred by the said E. G. in or about the negotiation for the said mortgage, and the preparation, engrossment, and execution hereof, and the investigation of the title to the said estates, or in anywise incidental hereto. Power to rescind.

15. In the meantime, and until the said mortgage shall be completed, the said share and interest of the said A. B. in the said estates shall be a security to the said E. G. for all moneys payable to him under this agreement, including all costs and expenses incurred in or about the premises. Charge.

As witness, &c.

Agreement for the Sale of a British Ship. Form 38.

1. An Agreement made [*date*] between A. B., of, &c., of the one part, and C. D., of, &c., of the other part. Parties.

2. The said A. B. agrees to sell, and the said C. D. to buy, the ship called the "Arno," built at Newcastle-upon-Tyne, of the measurement of 300 tons or thereabouts, now lying at Newport, Mon., for £——(of which £50 is now paid to the broker to bind the bargain); which said ship has been duly registered pursuant to Act of Parliament, a copy of the certificate of such registry being set forth in the schedule hereto. Agreement.

3. On payment of the purchase-money within one calendar month from the date hereof, a legal bill of sale shall be made out and executed to the purchaser at his expense, and the said ship with what belongs to her shall be delivered according to the inventory which has been exhibited, but the Completion.

Form 38. said inventory shall be made good as to quantity only. And the said ship, together with all her stores, shall be taken with all faults, in the state and condition in which they now lie, without any allowance or abatement whatsoever, within one calendar month from the date hereof.

Default. 4. But if default shall be made by the said C. D. in the payment above mentioned, the deposit shall be forfeited, and the said A. B. shall be at liberty to put up and sell the said ship again, either by public or private sale, and the deficiency, if any, upon such resale shall be made good by the said C. D., who shall be responsible for risks of every description, subsequent to the present purchase, and for all charges that may be incurred in consequence of non-compliance with this agreement; and neither the broker nor the said A. B. shall be accountable for the forfeited deposit.

Risk. 5. The said ship is declared to be at the risk of the said C. D. immediately after he is put into possession of her.

As witness, &c.

The Schedule above referred to.

[*N.B.—Here copy the Certificate of Registration with the indorsements on the back thereof.*]

Form 39. Agreement by Letters for Sale and Purchase of a Plot of Freehold Building Land.

(a) *Offer.*[1]

Sir, 1*st February*, 1896.

I hereby offer to sell to you for £100 my plot of freehold land situate on the east side of A. Street, in the township of B., and forming Lot 76 on the plan of the B. estate of the C. Land Co., Limited. The title to commence with the conveyance from that company to myself. A deposit of £5 to be paid upon your acceptance of this offer, and the balance of £95 to be paid and the purchase to be completed at the

[1] This offer may be withdrawn at any time before acceptance. (*Dickinson* v. *Dodds*, 2 Ch. D. 463.)

As to cases where a letter of acceptance is posted before receipt of notice of withdrawal of offer, see *Henthorn* v. *Fraser*, (1892) 2 Ch. 27.

office of my solicitors, Messrs. D. and Co., at, &c., on the 25th of March next. Possession on completion. Form 39.

Yours, &c.,

[*Signature.*]

(b) *Acceptance.*

Sir, 2*nd February*, 1896.

I hereby accept the offer contained in your letter of the 1st instant, and enclose my cheque for £5 by way of deposit.

Yours, &c.,

[*Signature.*]

OPEN AGREEMENT FOR SALE OF LEASEHOLD HOUSE. Form 40.

A. B., of [*address and description*], agrees to sell, and C. D., of [*address and description*], agrees to buy, the leasehold house, No. 999, E. Street, in the borough of F., for £500, of which £25 is now paid as a deposit. The purchase to be completed and possession given on [*date*]: Rent and outgoings to be paid by A. B. to that date, and by C. D. thenceforth.

[*Signatures.*]

AGREEMENT FOR SALE OF LAND. Form 41.

Short Form.

1. A. B., of, &c. (hereinafter called "vendor"), agrees to sell, and C. D., of, &c. (hereinafter called "purchaser"), agrees to purchase the fee simple of the property described in the schedule hereto. Agreement.

2. PURCHASE-MONEY to be £500. Purchase-money.

3. DEPOSIT of £25 to be paid by purchaser on signing this agreement. Deposit.

[*Add* Conditions III. to X. of Form 62 (pp. 299, 300), omitting Clause (*a*) of X.]

Dated, &c.

The SCHEDULE above referred to.

[*Insert concise description of property.*]

Form 42. AGREEMENT FOR SALE TO BE ANNEXED TO CONDITIONS USED AT AN AUCTION.

Short Form.

Parties. 1. AN AGREEMENT made the th of , 1896, between A. B., of, &c. (hereinafter called "vendor"), and C. D., of, &c. (hereinafter called "purchaser").

Agreement. 2. THE vendor will sell and the purchaser will buy the property hereinafter described.

Description. 3. THE property is that described as Lot 10 in the annexed printed particulars and plan, subject nevertheless to:—

(*a.*) The exception from the sale of the Close No. 3 in the said particulars and plan, which has already been sold.

(*b.*) A lease dated, &c., of the plot No. 2 in the particulars and plan, to X. Y., for the term of 21 years, from the 25th of March, 1895, at the rent of £10 per annum.

(*c.*) The changes which, since the particular and plan were prepared, have taken place in the property by the creation of new tenancies, rearrangement of farms, and reduction and readjustment of rents.

Purchase-money. 4. THE purchase-money is £15,000, to be paid as to £1,500 on the signing of this agreement to the vendor.

Conditions. 5. THE sale and purchase are made subject to the annexed printed conditions of sale so far as they are applicable to a sale by private contract, subject to the substitution of the [*date*] next for the [*date*] in Condition No. 6.

[*Add any other required change.*]

AS WITNESS, &c.

Form 43. SHORT AGREEMENT FOR SALE, IN CONSIDERATION OF A PERPETUAL RENT-CHARGE, TO BE WRITTEN AT FOOT OF DRAFT CONVEYANCE.

WE approve of the foregoing draft conveyance and of all the terms thereof, and agree as follows:—

Conveyance. (1.) On or before [*date*] to execute in duplicate a conveyance in the words and figures contained in such draft.

Possession. (2.) The conveyance to be dated, and possession of the

land comprised therein taken by the undersigned C. D. on [*date*]. Form 43.

(3.) The conveyance and draft to be prepared and completed by the solicitors of the undersigned A. B. at the expense of C. D., and the duplicate conveyance to be retained by A. B. for his own use. Preparation of conveyance.

(4.) The conveyance to be handed to C. D. when (and not before) he shall have erected and completed to the satisfaction of A. B.'s surveyor such buildings as are in the conveyance covenanted to be erected and completed. Completion.

(5.) The title of A. B. is accepted by C. D. without investigation. Title.

(6.) If C. D. fail in any respect to comply with the foregoing conditions, A. B. may sell the land described in the foregoing draft conveyance, and may recover from C. D., as liquidated damages, a sum equal to twenty-five times the difference between the yearly rent-charge mentioned in the foregoing draft conveyance and any less yearly rent-charge which may be obtained on such sale, together with all the expenses attending such sale. Dated, &c. Default.

AGREEMENT FOR SALE OF FREEHOLD HOUSE. Form 44.

Short Form.[1]

1. AN AGREEMENT made [*date*] between A. B., of, &c., of the one part, and C. D., of, &c., of the other part:— Parties.

2. THE said A. B. agrees to sell, and the said C. D. to buy, for £800, the inheritance in fee simple in possession of and in ALL that messuage known as North Villa, situate in X. Road at Y., in the County of Z., with the garden, outbuildings and appurtenances as now in the occupation of the said A. B. Agreement.

3. THE said C. D. shall pay a deposit of £80 upon signing this agreement. Deposit.

4. THE title shall commence with a conveyance dated, &c., [and all recitals and statements in such conveyance shall Abstract.

[1] This is a form which does not unduly curtail the ordinary rights of a purchaser.

Form 44.

be deemed conclusive evidence of the matters, facts, and conclusions of law therein recited, stated, or implied].[1]

Rescission.

5. [2]If the said C. D. shall make any objection or requisition which the said A. B. shall be unable or unwilling to remove or comply with, the said A. B. may rescind this agreement by notice in writing to the said C. D., unless the said C. D. shall, within seven days after such notice, withdraw such objection or requisition. Upon such rescission, the said A. B. shall repay the said sum of £80, which shall be accepted by the said C. D. in full satisfaction of all claims in respect of this agreement.

Completion.

6. The purchase shall be completed on the [*date*], when the said C. D. shall be let into possession of the premises; all outgoings prior to that time shall be paid by the said A. B., and after that time by the said C. D.; and if from any cause (other than the wilful default of the said A. B.) the purchase shall not be then completed, the said C. D. shall pay interest on the balance of purchase-money from that day until the actual payment thereof at the rate of £5 per cent. per annum. The said C. D. shall have the benefit of the existing policy of insurance, and the premium for the current year shall be deemed an outgoing and apportioned accordingly.

As witness, &c.

Form 45.

Agreement for Sale of a Leasehold House.

Parties.

1. An Agreement made [*date*] between A. B., of, &c. (hereinafter called "the vendor"), of the one part, and C. D., of, &c. (hereinafter called "the purchaser"), of the other part.

Agreement.

2. The vendor will sell, and the purchaser will buy, at the price of £1,500, the leasehold house, with the garden, yard, and outbuildings known as No. 100, X Road, in the parish

[1] If the deed commencing the title is twenty years old, the words in brackets may be omitted.

[2] It might be well to insert here a clause limiting the time for requisitions. (See Form 45, § 4; Form 62, § 4; and Form 63, § 4; Form 64, § 4; and Form 65, § 4.)

of Y, in the county of Z, held by the vendor, at a ground rent of £10, for a term of 99 years from Midsummer, 1890, created by a lease dated the —th of May, 1890, and made between Lord X. of the one part and V. W. of the other part.

Deposit. 3. The vendor hereby acknowledges the receipt of £150 paid by the purchaser as a deposit on signing this agreement.

Abstract. 4. The vendor shall, within 14 days from the date hereof, deliver to the purchaser an abstract of his title to the said house, subject to the stipulations herein contained.

Requisitions. 5. The purchaser shall send to the office [*continue as in* § 4 *of Form* 46, *page* 278].

Title. 6. The abstract shall commence with the lease mentioned in § 2 [and the purchaser shall not make any objection or requisition founded on the fact that the said lease contains restrictive covenants as to building and user intended to secure the preservation of X Road as a residential street].

Easements and errors. 7. The property is believed [*continue as in* § 6 *of Form* 46, *page* 279].

Identity. 8. The purchaser shall admit [*continue as in* § 7 *of Form* 46, *page* 279].

Fixtures and fittings. 9. The purchaser shall take the fixtures and planned fittings specified in the schedule hereto at a valuation to be made by two valuers to be appointed within 14 days from the date hereof by the vendor and purchaser, or by their umpire to be appointed pursuant to the Arbitration Act, 1889.

Completion. 10. The purchaser shall pay the remainder of his purchase-money and the amount of the said valuation on the 24th of June next, at the office aforesaid, to the vendor or as he shall direct; and upon such payment the vendor will execute and deliver to the purchaser a proper assignment of the said house, such assignment to be prepared by and at the expense of the purchaser.

Possession and outgoings. 11. The vendor will retain possession and pay all outgoings up to the 24th of June next, from which date possession shall be taken and the outgoings discharged by the purchaser, who shall have the benefit of the existing policy of assurance, the premium for the current year being treated as an outgoing. All outgoings shall be apportioned for the purpose of this clause.

Form 45. Interest.

12. If from any cause whatever [*continue as in* § 12 *of Form* 46, *page* 280].

The Schedule above referred to.

[*Insert inventory of fixtures and fittings.*]

Form 46.

Agreement for Sale of a Freehold Farm by Trustees of a Will.[1]

Parties.

1. An Agreement made [*date*] between A. B., of &c., and C. D., of &c. (hereinafter called "the vendors"), of the one part, and E. F., of &c. (hereinafter called "the purchaser") of the other part.

Agreement.

2. The vendors will sell, and the purchaser will buy, for £——, the inheritance in fee simple in possession of and in all that farm known as X. farm in the parish of Y., in the county of Z., with the messuage and farm buildings thereon, and the appurtenances, which said farm comprises the closes of land specified (with the approximate dimensions thereof respectively) in the schedule hereto.

Abstract.

3. The vendors will deliver to the purchaser an abstract of title to the premises, to commence with [an award dated in April, 1864, under the Y. Inclosure Act, and the regularity of such award, and its validity in all respects, shall be admitted by the purchaser, and he shall not be entitled to call for the production of the title of the lands in respect of which the premises were allotted].[2]

Requisitions.

4. The purchaser shall send to the office of the vendor's solicitors [at Y. aforesaid] his objections and requisitions, if any, in respect of the title, the parties to or form of conveyance within twenty-one days after the delivery of the abstract, and any further objections or requisitions within fourteen days after the delivery of the replies in respect of which they are made, the title, except as so objected to, being considered as accepted, and in this respect time shall

[1] This is a full form, with all the usual general clauses. Particular defects in title may render other clauses necessary in certain cases. See forms of Conditions of Sale, pp. 301 *et seq.*, *infra*.

[2] This clause must, of course, be varied to suit the title of the particular property sold.

be of the essence of the contract; and if any objection or requisition shall be made which the vendors shall be unable or unwilling to remove or comply with, and shall not be withdrawn within seven days after notice of such inability or unwillingness shall have been given to the purchaser, they shall be at liberty, notwithstanding any previous negotiation, to rescind the contract by notice in writing signed by their solicitors, and shall thereupon repay to the purchaser his deposit, but without interest, costs, or damages.

[*Here insert any special clauses that the title may render necessary.*]

Recitals evidence.

5. Every recital or statement in any document dated [fifteen] years prior to the day of the sale shall be conclusive evidence of the facts, matters, and conclusions of law recited, stated, and implied therein.[1]

Easements and errors.

6. The property is believed and shall be taken to be correctly described, and is sold subject to all easements and outgoings. If any error or misstatement be discovered, it shall not annul the sale or entitle either party to compensation.

Identity.

7. The purchaser shall admit the identity of the property with that comprised in the muniments offered by the vendors as the title upon the evidence afforded by a comparison of the descriptions in the schedule hereto, and the said muniments.

Registration.

[8.[2] All deeds not properly registered in the county register shall, if required and practicable, be registered or re-registered at the purchaser's expense; but no other requisition or objection shall be made in respect thereof.]

Stamps.

9. The purchaser shall bear the expense of stamping or re-stamping any unstamped or insufficiently stamped documents dated prior to the 16th of May, 1888.

[1] This clause need not be inserted unless it is desired to make recitals in deeds less than twenty years old evidence. See 37 & 38 Vict. c. 78, s. 2 (2). Formerly provisions negativing the purchaser's right to prior title, and throwing the cost of the production, and obtaining all deeds, evidence, and information not in the vendor's possession on the purchaser were usually inserted; but § 3 (6) of the Conveyancing Act, 1881, renders this unnecessary after 31st Dec. 1881.

[2] This clause is only required for property in Yorkshire or Middlesex.

Form 46.

Completion. 10. The vendors acknowledge receipt of a deposit of £——, and the purchaser shall pay the balance of the purchase-money at the office aforesaid on the [*date*], and upon such payment the vendors will execute a proper conveyance of the premises to the purchaser. They will convey "as trustees," but will not otherwise give any covenant, express or implied. The conveyance shall be prepared by and at the expense of the purchaser and shall be left at the office aforesaid not less than seven clear days before the said [*date*].

Outgoings. 11. The vendors will receive the rents and profits and pay the outgoings of the premises up to the said [*date*], the purchaser paying the same from that time. The purchaser shall have the benefit of the existing policy of insurance of the farm buildings, and the current year's premium shall be deemed an outgoing. The outgoings shall be apportioned for the purpose of this clause.

Interest. 12. If from any cause whatever, other than the wilful default of the vendors, the purchase shall not be completed at that time, the purchaser shall thenceforth pay interest on his purchase-money at £5 per cent. per annum, until the actual payment thereof.

As witness, &c.

The Schedule above referred to.

[*Insert description of property with acreages.*]

Form 47. Agreement for Sale of Freeholds at a Perpetual Rent.[1]
Short Form.

Parties. 1. An Agreement for sale and purchase made [*date*] between A. B., of, &c. (vendor), who sells, and C. D., of, &c. (purchaser), who buys.

Property. 2. Property sold and purchased is [*description*].

Price. 3. Price to be paid is a perpetual yearly rent to be charged on the property, to commence from [*date*] and to be payable half-yearly on [*dates*], the first payment to be made on [*date*].

[1] Sales at a perpetual rent are not uncommon in some parts of Lancashire.

Form 47.

4. Abstract of title to be delivered within 7 days and to commence with an indenture dated [*date*], and made between X., of, &c., of the one part, and Y., of, &c., of the other part. Abstract.

5. Objections to and requisitions on title not sent in writing to vendors' solicitors within 14 days from actual delivery of abstract to be considered waived. Requisitions.

6. Possession to be taken by purchaser on date hereof without being deemed an acceptance of title. Possession.

7. Temporary fences enclosing the land to be erected and, until execution of conveyance, maintained by purchaser to satisfaction of vendor. Fences.

8. Four dwelling-houses to be erected and completed on the property by purchaser within 10 months from date hereof to satisfaction of vendor, and in accordance with plans and elevations to be previously approved of by him in writing. Building.

9. Rents and outgoings to be received and paid by vendor up to, and by purchaser from, date hereof and if necessary to be apportioned. Rents and outgoings.

10. Conveyance to purchaser to be prepared with a duplicate for vendor at purchaser's expense by vendor's solicitor, and executed by both vendor and purchaser, and to be in the form which has been approved of by purchaser and signed by both parties, and to be retained by vendor until purchaser has erected and completed the said dwelling-houses in accordance with this agreement. Conveyance.

11. Right to rescind this agreement and to retain any buildings and materials on the property is reserved to vendor— Rescission.

(a.) If purchaser shall fail to perform the foregoing stipulations on his part;

(b.) If purchaser shall not commence the said dwelling-houses for 3 months from date hereof, or shall for 4 consecutive weeks at any time fail to proceed with the execution of the said dwelling-houses to the satisfaction of vendor and his surveyor;

(c.) If vendor cannot or will not remove any objection to or requisition on title.

As witness, &c.

Form 48. AGREEMENT FOR SALE OF FREEHOLDS WITH CONSENT OF MORTGAGEES IN CONSIDERATION OF A PERPETUAL RENT-CHARGE, THE PROPERTY BEING, WITH OTHER PROPERTY, SUBJECT TO AN OVERRIDING RENT-CHARGE PAYABLE BY VENDOR.

Parties. 1. AN AGREEMENT made the [*date*], between A. B., of, &c., of the first part, C. D., of, &c., and E. F., of, &c., of the second part, and G. H., of, &c., of the third part.

Agreement. 2. A. B., with the consent of C. D. and E. F. (his mortgagees), agrees to sell, and G. H. agrees to buy, the fee simple in possession of the plot of land situate, &c., containing, &c., and delineated and edged red in the plan hereon, upon and subject to the following terms and conditions.

Abstract. 3. ABSTRACT to be delivered within seven days. Title to commence with a conveyance dated, &c., of this and other property subject to a perpetual rent-charge of £20 and to certain covenants and provisions which G. H. has had an opportunity of inspecting.

Requisitions. 4. OBJECTIONS to and requisitions on the title not sent in writing to A. B.'s solicitor within fourteen days from actual delivery of abstract to be considered waived.

Covenants. 5. RECEIPT for last half-year's rent of £20 accrued due prior to completion to be evidence that all the covenants have been performed and observed, and that any breaches have been waived.

Buildings. 6. BUILDINGS are to be erected and completed by G. H. on or before, &c., to the satisfaction of A. B., and of the clear yearly letting value of £40 at the least.

Consideration. 7. CONSIDERATION for the sale to be a perpetual yearly rent-charge of £10, commencing from the [*date*], next, and to be payable half-yearly (the first half-year's payment to be made at the expiration of six calendar months from that day) and to be by the conveyance to G. H. charged on and limited and issuing by way of use out of the property, and to be payable in perpetuity to C. D. and E. F., or as they shall direct.

8. POSSESSION to be taken and outgoings discharged by A. B. up to and by G. H. (except as regards the rent-charge of £20) from the [*date*] next, and the outgoings, if necessary, to be apportioned to that day.

Form 48.

9. CONVEYANCE of the property to G. H. to be executed when, and not before, buildings have been erected and completed as hereinafter required, to be prepared and stamped in duplicate (the duplicate being for the use of C. D. and E. F., at the expense of G. H., by his solicitor), and both to be executed by all parties, and to contain the following provisions:—

(*a.*) Powers of distress and receipt of rents and profits and absolute re-entry over and upon the property in such form, and exercisable in such events and during such periods as C. D. and E. F. shall require.

(*b.*) Covenants by G. H. (binding also his assigns), with A. B., and separately with C. D. and E. F., to pay the rent-charge of £10, always to have on the property, and in good repair, buildings of the clear yearly letting value of £40 at the least, and to perform and observe all the grantee's covenants contained in the conveyance to A. B. (except the covenant to pay the said rent-charge of £20) so far as they relate to the property hereby agreed to be sold, and to indemnify A. B. therefrom and from all consequences of non-performance and non-observance.

(*c.*) Covenants by A. B. to pay the rent of £20, and to perform and observe the said grantee's covenants so far as they relate to the remainder of the property comprised in the said conveyance, and to indemnify G. H. therefrom and from all consequences of non-payment, non-performance, and non-observance.

(*d.*) Power for G. H., if called on, to pay the rent-charge of £20, or any part thereof, to retain the amount paid out of the said rent-charge of £10.

(*e.*) Such other provisions as C. D. and E. F. shall require for giving to them and A. B. respectively such powers, rights and interests over and in the said rent-charge of £10 as they respectively had over and in the property hereby agreed to be sold, immediately before the execution of the conveyance, and

(*f.*) An acknowledgment of the right of G. H. to production and delivery of copies of all deeds in the

Form 48.

possession of C. D. and E. F. relating to the property (which deeds they are to retain).

10. Rights reserved to C. D. and E. F. and separately to A. B. are:—

(*a.*) To enter upon the property from time to time to inspect the condition thereof.

(*b.*) To rescind the sale if A. B. cannot or will not remove any objection to or requisition on title.

(*c.*) Either to resell the property or to rescind the sale if buildings are not erected and completed as hereinbefore required, or if any time after the conveyance to G. H. the said rent-charge of £10, or any part thereof, shall be in arrear for thirty days, and in case of re-sale, to recover from G. H., as liquidated damages, any deficiency in price on, and all expenses attending the re-sale. As witness, &c.

Form 49. Agreement for Sale of Leasehold Manufactory and Stock in Trade of a Lace Manufacturer, the Value of the Stock to be paid by Bills.[1]

Parties.

1. An Agreement, made [*date*] between A. B., of, &c., of the one part, and C. D., of, &c., of the other part.

Agreement for sale of leaseholds.

2. The said A. B. agrees to sell, and the said C. D. agrees to buy, all that warehouse situate, &c., with the appurtenances thereto belonging, as the same is held by the said A. B., under an indenture of lease for a term of twenty-one years from [*date*] at the yearly rent of £100, with the warming apparatus and all the fixtures (except fixtures belonging to the landlord): And also all that factory situate, &c., with the appurtenances thereto belonging, as the same is held by the said A. B. under an indenture of lease for a term of twenty-one years, from [*date*] at the yearly rent of £200, together with all fixtures (except fixtures belonging to the landlord): And also all those rooms situate at, &c., with the appurtenances held by the said A. B. as yearly tenant at the respective yearly rents of £10 and £15,

[1] See *Pryor* v. *Wilson*, 23 S. J. 230, as to misrepresentation by vendor of a business.

together with the fixtures (except fixtures belonging to the landlord).

Title.

3. The title to the premises shall commence with the several leases and agreements under which the same are respectively held.

Production of leases.

4. The said leases having been produced to and inspected by the purchaser, he shall be deemed to buy with full notice of their respective contents and effect.

Valuation.

5. Each party shall, on signing this agreement, appoint a valuer, or in case either party shall make default in so doing for seven days, the other may appoint two valuers; the two valuers, immediately after their appointment, shall name an umpire to decide between them in case of dispute; such two valuers or their umpire shall, on the [*date*], proceed to fix and award the sum to be paid by the said C. D. to the said A. B. for the purchase of the said premises and fixtures, and the sum so fixed and awarded shall be final and conclusive.

Agreement for sale of frames.

6. The said A. B. also agrees to sell, and the said C. D. agrees to buy, upon the terms mentioned in paragraph 7 hereof, all the 1,416 lace machines belonging to the said A. B. in the said factory.

Bond for annuity.

7. The said C. D. shall, on the completion of the purchase of the premises, execute and deliver to the said A. B. a bond prepared by the solicitors of the said A. B., at the expense of the said C. D., in a sufficient penalty conditioned for the payment to the said A. B. during his life, by quarterly payments, of a yearly annuity of £——, the first quarterly payment to be made on the [*date*], and for the payment to E. B., the wife of the said A. B., in case she shall survive him, during her life of a yearly annuity of £——: but each such annuity shall be redeemable by the purchase of a government annuity of like amount to the annuity redeemed.

Default.

8. In case the purchase of the premises mentioned in paragraph 6 hereof shall, through the neglect or default of the said C. D., not be completed on the [*date*], the said C. D. shall pay to the said A. B. or his wife, as the case may be, the first quarterly payment of the said annuity on the [*date*], and shall continue to make the said quarterly payments until the above-mentioned bond shall have been given.

Form 49.

Agreement for sale of stock.

9. The said A. B. also agrees to sell, and the said C. D. agrees to purchase, all the stock in trade, wares, and merchandize of the said A. B., both manufactured and unmanufactured, at the price following, that is to say, the manufactured articles at the sums specified in the regular list of prices of the said A. B., less five per cent. discount; and the unmanufactured articles, both in the warehouses and in the hands of the workmen, at their nett prime cost, to be fixed by reference to the business books of the said A. B.

Payment for stock, &c.

10. The said stock in trade, wares, and merchandize shall be paid for, with interest, as follows, namely, interest shall begin to run in respect of such part of the purchase-money thereof as shall remain unpaid from [*date*]. The said C. D. shall, on the said [*date*], accept bills drawn by the said A. B. on him, and payable in manner following, that is to say, a bill payable six months after date for one-fourth of the full amount or value of the said stock in trade, wares, and merchandize, ascertained as aforesaid; a bill payable nine months after date for £1,000, and such further sum added thereto as three months' interest on the value of the said stock in trade, wares, and merchandize, ascertained as aforesaid shall amount to, after deducting the aforesaid one fourth part thereof so paid as aforesaid; a bill payable twelve months after date for £1,000, and such further sum added thereto as three months' interest on the balance remaining of the said full value shall amount to, after deducting the amount so paid as aforesaid; a bill payable fifteen months after date for £1,000, and such further sum added thereto as three months' interest on the balance then remaining of the said value shall amount to, after deducting the amounts so paid as aforesaid; and such further bills for £1,000 each, payable at every succeeding three months, with interest added thereto, calculated in manner aforesaid, as shall be requisite to make up the full value of the said stock in trade, wares, and merchandize. The stamps on all the said bills of exchange shall be paid for by the said C. D.

Completion.

11. The purchase shall be completed and the purchase-money (except as aforesaid) paid on the [*date*], and upon such payment the said leasehold hereditaments shall be duly assigned to the said C. D. or as he shall direct. In case default shall be made in completion on that day, interest

Form 49.

shall be paid on the amount of the purchase-money at the rate of £5 per cent. per annum from the said [*date*] to the actual payment thereof.[1]

Possession.

12. On the completion of the purchase the said C. D. shall be let into possession of the premises, and shall thenceforth pay all rents and outgoings, the same up to that date being paid by the said A. B.

As witness, &c.

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[1] Compare the following clause as to completion in the case of freeholds:—

11A. Upon payment of the purchase-money as aforesaid, the vendors and all necessary parties shall convey the property to the purchaser in fee simple free from incumbrances. The purchaser's assurance shall in all respects (and whether or not any person other than the vendors be a party thereto) be prepared at the purchaser's cost, and the vendors shall not be required to release any incumbrance by a separate instrument. The vendors will pay the cost of perusal and execution by any incumbrancer, but not by any bare trustee, and the purchaser's assurance shall be left with the vendors' solicitors for execution at least three clear days before the date fixed for completion.

In the case of a public-house, the following clause should be added:—

11B. As from the date hereof, the purchaser shall bear the risk of the licence or licences to the said premises for the sale of liquors, and no loss thereof or endorsement thereon shall annul the sale or be a ground of any abatement of the said purchase-money or any other compensation to the purchaser.

APPOINTMENTS.

Form 50. APPOINTMENT OF A SHARE OF RESIDUARY ESTATE.

Introduction. 1. TO ALL TO WHOM THIS DEED shall come, I, A. B., of, &c., send greeting:

Recital of will. 2. WHEREAS C. B., of, &c., duly made his will, dated, &c., and thereby gave all his real and personal estate to R. S. and T. W. upon certain trusts therein mentioned, being in effect trusts for conversion and payment of his debts, funeral and testamentary expenses, and for the investment of the residue thereof. And he thereby directed the said R. S. and T. W. to pay the income of such residue to me for my separate use for life, and after my death to hold the same residue in trust for such one or more of his issue by me the said A. B., in such manner as I should, so long as I should remain his widow, by deed, will, or codicil appoint.

Death and probate. 3. AND WHEREAS the said C. B. died on [*date*], and his said will was duly proved by the said R. S. and T. W., the executors therein named.

Present investment. 4. AND WHEREAS the said R. S. and T. W. duly converted into money the real and personal estate of the said C. B. and paid thereout his funeral and testamentary expenses and debts, and the residue of his said estate is now represented by the sum of £20,000 New Consols standing in the names of the said R. S. and T. W. in the books of the Governor and Company of the Bank of England.

Issue of marriage. 5. AND WHEREAS there was issue of the said C. B. and myself five children, of whom one, namely, D. B., has recently attained the age of [twenty-four years, and is about to commence business on his own account], and I, being still the widow of the said C. B., am desirous of making such appointment as hereinafter contained.

Testatum. 6. NOW KNOW YE, that I, the said A. B., in exercise of the power for this purpose given to me by the said will, and of all other powers (if any) enabling me in this behalf,

Appointment of one-tenth of fund. HEREBY APPOINT that the said R. S. and T. W. shall stand

possessed of one equal tenth part of the said sum of £20,000 Bank £3 per cent. Consolidated Annuities, in trust for the said D. B. absolutely. **Form 50.**

IN WITNESS, &c.

APPOINTMENT OF NEW TRUSTEE OF A WILL OF FREEHOLDS UNDER EXPRESS POWER. **Form 51.**

1. THIS INDENTURE, made, &c., between A. B., of, &c., and C. D., of, &c., of the one part, and E. F., of, &c., of the other part. Parties.

2. WHEREAS G. H., late of, &c. (hereinafter called "the testator"), duly made his will, dated, &c., and thereby devised all his real estate situate in the county of Y. unto I. K., and the said A. B. and C. D., their heirs and assigns, upon the trusts thereby declared. And he thereby declared that if any of the trustees appointed by his said will should die [*recite in the past tense the power to appoint new trustees as set out in the will, showing that the power to appoint a new trustee is vested in A. B. and C. D, as surviving trustees*]. Recital of will.

3. AND WHEREAS the testator died without having revoked or altered his said will, which was duly proved by the executors therein named. Death and probate.

4. AND WHEREAS the said I. K. died on the [*date*]. Death of a trustee.

5. AND WHEREAS the testator was at his death seised in fee simple, free from incumbrances, of the hereditaments described in the first and third schedules hereto. Freeholds devised by will.

6. AND WHEREAS, pursuant to powers in that behalf contained in the said will, the hereditaments described in the said third schedule have been sold, and the proceeds of such sale have been invested in the purchase of the hereditaments described in the second schedule hereto, which (together with those described in the said first schedule) are now vested in the said A. B. and C. D. upon the trusts of the testator's will. Sales of freeholds.

7. NOW THIS INDENTURE WITNESSETH, that in exercise of the power for this purpose contained in the said will, and of every other power enabling them in this behalf, the said A. B. and C. D. hereby appoint the said E. F. to be a trustee of the said will in the place of the said I. K. Testatum.

8. AND the said A. B. and C. D. hereby declare that all Vesting declaration.

Form 51.

and singular the hereditaments described in the first and second schedules hereto, and all other (if any) hereditaments now vested in the said A. B. and C. D. upon the trusts of the testator's will, shall, from and immediately after the execution hereof, be and remain vested[1] in the said A. B., C. D., and E. F. in fee simple, upon, with, and subject to such of the trusts, powers, provisions and declarations concerning the same declared by the testator's will as are now subsisting and capable of taking effect.

Covenant against incumbrances.

9. And the said A. B. and C. D. hereby respectively covenant with the said E. F., his heirs and assigns, that the covenantors respectively have not done, executed, or knowingly suffered any act, deed, or thing whereby the said hereditaments are or can be in any manner incumbered, charged, or affected in title, or otherwise howsoever.

In witness, &c.

The 1st Schedule above referred to.

[*Describe hereditaments devised by will and still unsold.*]

The 2nd Schedule above referred to.

[*Describe hereditaments bought by trustees.*]

The 3rd Schedule above referred to.

[*Describe hereditaments devised by will and since sold by trustees.*]

Form 52.

Appointment of New Trustee of a Settlement by Indorsement under the Statutory Power.[2]

Parties.

1. This Indenture, made, &c., between the within-named A. B. and C. D., of the one part, and G. H. and I. K., of, &c., of the other part:

Desire to be discharged.

2. Whereas the said C. D. is desirous of being discharged

[1] As to transfer by declaration, see notes to next form, p. 292.

[2] New trustees for the purposes of the Settled Land Acts may be appointed under § 10 of the Trustee Act, 1893. See § 17 of the Settled Land Act, 1890 (53 & 54 Vict. c. 39).

from the trusts of the within-written indenture (hereinafter called "the settlement"). Form 52.

3. And whereas the within-named E. F. died on the 9th of July, 1888. Death of a trustee.

4. And whereas the funds now subject to the trusts of the settlement consist of the several mortgage debts specified in the first schedule hereto (which are secured by the several mortgages, the short particulars of which are specified in the same schedule), and also of the stocks, funds, and shares specified in the second schedule hereto, and of the furniture and chattels specified in the 3rd schedule hereto. Present state of funds.

5. And whereas the said A. B. and C. D. are desirous of appointing the said G. H. and I. K. trustees of the settlement in the place of the said C. D. and E. F. Desire to appoint.

6. And whereas it is intended that the several mortgage debts, and the securities for the same specified in the said first schedule, shall be transferred to the said A. B., G. H., and I. K. by four several indentures already engrossed, and intended to bear even date with, and to be executed immediately after the execution of, this indenture, and that the stocks, funds, and shares specified in the said second schedule shall forthwith be transferred into the names of the said A. B., G. H., and I. K. Intended transfer.

7. Now this Indenture witnesseth, that the said A. B. and C. D., in execution of the power given to them by the Trustee Act, 1893, and of all other powers enabling them in this behalf, hereby appoint the said G. H. and I. K. to be trustees of the settlement in the place of the said C. D. and E. F. Testatum.

8. And the said A. B. and C. D. hereby declare that the furniture and chattels specified in the third schedule hereto shall henceforth be and remain vested in the said A. B., G. H. and I. K. for all such estate therein as is now vested in the said A. B. and C. D. Vesting declaration.

9. And it is hereby declared that the said A. B., G. H., and I. K. shall stand possessed of the said furniture and chattels and also of the mortgage debts, stocks, shares, and securities specified in the said schedules hereto, when the same shall have been so transferred to them as aforesaid, upon, with, and subject to such of the trusts, powers, pro- Declaration as to trust funds.

Form 52.

visions, and declarations contained in the settlement as are now subsisting and capable of taking effect.[1]

In witness, &c.

The 1st Schedule above referred to.

Amount.	Date of Mortgage.	Names of Mortgagors.	Mortgaged Property.	Rate of Interest.
£ 2,000	1st Jan., 1888.	Samuel Smith.....	Farm at X. known as "Y."	£4 per cent.
500	1st Jan., 1888.	Benjamin Brown.	20 acres of land at Z.	4½ „
1,000	1st July, 1888.	George Green	House and land at W.	3½ „
500	1st July, 1888.	John Jones	Freehold residence at V.....	4½ „

The 2nd Schedule above referred to.

£5,000 New Consols.
£3,750 New Zealand Inscribed Stock.
£2,000 Great Northern Railway A Stock.
50 Preference Shares of £10 each in the ——— Company, Limited.

The 3rd Schedule above referred to.

[*Insert inventory of furniture and chattels.*]

[1] Notwithstanding § 12 of the Trustee Act, 1893, it will still be, in many cases, desirable to convey freehold and leasehold trust property by a separate deed in order to keep notice of the trusts of the settlement off the title. Another objection to transferring them by mere declaration is that a declaration does not imply a covenant against incumbrances.

The legal estate in (*a*) copyholds, (*b*) mortgages of freeholds or leaseholds, (*c*) shares, stocks, or annuities transferable in the books of a company or other body, cannot be vested in new trustees by mere declaration without conveyance or transfer.

Where a new trustee is appointed in the place of a retiring bankrupt trustee, the following proviso may be useful:—

Provided always, that nothing herein contained shall operate to release the said A. B. or his estate, or trustee in liquidation, or bankruptcy, or any person or persons from any liability which he, it, or they may have incurred or be under, or from any claim which he, it, or they may be liable to in respect of any breaches of trust committed by, or any misconduct of, the said A. B. as such trustee as aforesaid.

APPOINTMENT OF GAMEKEEPER. Form 53.

KNOW ALL MEN by this deed, that I, A. B., of, &c., hereby appoint C. D., of, &c., to be my gamekeeper for my manor of X., to look after, take care of, and preserve the game therein, with full power to take and kill any hare, pheasant, partridge, or other game in and upon my said manor [for his own use]: And also to seize all such guns, dogs, ferrets, nets, and engines for killing and taking coneys, hares, pheasants, partridges, grouse, or other game, as within the precincts of my said manor shall be used by any person by law forbidden to keep or use the same: And also to do all other things belonging to the office of a gamekeeper, according to the several Acts of Parliament now or hereafter during his appointment in force.

IN WITNESS, &c.

APPOINTMENT OF TWO SURVEYORS UNDER LANDS CLAUSES CONSOLIDATION ACT TO FIX THE AMOUNT OF A RENT-CHARGE TO BE PAID FOR PURCHASE OF LAND OR EASEMENTS FROM A TENANT FOR LIFE BY A DISTRICT COUNCIL. Form 54.

BE IT REMEMBERED that, pursuant to the Lands Clauses Consolidation Acts, 1845 and 1860, incorporated in the Public Health Act, 1875, the District Council for the District of X., in the County of Y., hereby nominates A. B., of &c., and C. D., of, &c. (tenant for life of the land hereinafter referred to), hereby nominates E. F., of, &c., as the two surveyors, to determine by their valuation (having regard to any special condition which may affect value) the amount of the annual rent-charge to be paid by the Council as the consideration for the purchase by it of the fee simple of [or the right to construct and maintain in perpetuity a sewer through or under] the land described in the schedule hereto, such rent-charge not to be less than one-fourth part greater than the net annual rent received by the persons heretofore interested in the land purchased, upon an average of the last seven years, and to estimate and fix the gross sum by way of compensation for any damage that may be done to other [*omit* "other" *if an easement for sewer, &c., is being required*] land of the said

Form 54. C. D. by the works of the Council; five per cent. on which gross sum is to be added to and form part of the said rent-charge.

As WITNESS the Common Seal of the Council, and the hand of the said C. D., this, &c.

SCHEDULE.

WE, the before-named A. B. and E. F., hereby declare that (having regard to the special condition before referred to) the amount of the annual rent-charge to be paid by the above-named Council as the consideration for the purchase of the fee simple of the land [or the right to construct and maintain the sewer] before referred to is £8, and that the sum of £20 is the gross sum by way of compensation for any damage which has been and may be done to any other land of the said C. D. by the works of the Council; five per cent. on which gross sum is to be added to and form part of the said rent-charge.

AND we hereby declare that this our valuation is correct, As witness, &c.

Form 55. ACKNOWLEDGMENT AS TO DEEDS. CONCISE FORM.

I, A. B., of, &c., having this day sold and conveyed to C. D., of, &c., certain hereditaments known as X. Farm, situate at Y., in the county of Z., hereby acknowledge the right of the said C. D. to production and delivery of copies of the documents specified in the schedule hereto (which are now in my possession, and relate to the said hereditaments, and also to other hereditaments belonging to me). And I hereby undertake for the safe custody of the same documents.

Dated this 6th of September, 1896.

Form 56. ASSENT OF EXECUTORS TO BEQUEST OF LEASEHOLDS.

WE, A. B. and C. D., the executors of the last will of E. F., deceased, dated, &c., and proved by us on the [*date*], hereby testify that we assent to the bequest in the said will contained of a leasehold messuage situate at and known as No. 5, X. Street, in the parish of Y., in the county of Z., to G. H. of [*address and description.*]

[*Signatures.*]

Dated, &c.

BONDS.

Common Money Bond. Form 57.

1. Know all men by these presents, that we, A. B., of, &c., and C. D., of, &c., are bound to E. F., of, &c., in the penal sum of £200, to be paid to the said E. F., or his executors, administrators, or assigns, for which payment we hereby bind ourselves and each of us, our and each of our heirs, executors, and administrators jointly and severally. Sealed with our seals. Dated, &c. Testatum.

2. The condition of the above-written bond is such, that if the above-bounden A. B. and C. D., or either of them, their or either of their heirs, executors, or administrators shall, on demand, pay to the said E. F., his executors, administrators or assigns, the sum of £100 sterling, with interest for the same at £5 per cent. per annum, then the above-written bond shall be void, otherwise shall be in full force. Condition.

Signed, sealed, and delivered
in the presence of . (L.S.)

Bond from the Collector of a Brewery and his Sureties.[1] Form 58.

1. Know all men by these presents that J. H., of, &c., C. D., of, &c., and E. F., of, &c., are bound to J. B., of, &c. [*continue as in Form 57 above, down to "dated," &c.*]. Testatum.

2. Whereas the above-named J. B. has taken the above-named J. H. into his employment as manager of his business of a brewer, and as receiver of the rents and profits of his messuages, cottages, lands, and hereditaments in the county of X., and the above-bounden C. D. and E. F. have agreed to join with the said J. H. in the above-written bond for his fidelity in the said employ. Recital.

3. Now the condition of the above-written bond is such Condition.

[1] This bond is supposed to be given by the collector appointed by Form 14, p. 224, *ante*.

Form 58. that if the said J. H. shall, so long as he shall be in the employment of the said J. B., faithfully account for, pay over, and deliver unto the said J. B., his executors, administrators, partners, or assigns [or to such other person or persons as he or they shall direct], all sums of money, books, papers, matters, and things belonging to the said J. B. which shall from time to time be received by or come to the hands of the said J. H., and also shall act and conduct himself at all times with fidelity, integrity, and punctuality in and concerning the matters and things which may be reposed in or entrusted to him as such manager and receiver as aforesaid, and shall return and make good any such moneys, books, papers, matters or things as he may embezzle, take, or misemploy within the space of seven days after he shall have been justly accused thereof, or in default thereof, if the said C. D. and E. F., or either of them, shall within fourteen days after he or they shall have had notice in writing from the said J. B. of any such default, make due and sufficient repayment, restitution, or compensation for the loss or damage which the said J. B. shall have thereby sustained, then the above-written bond shall be void, otherwise the same shall remain in full effect.

Signed, sealed, &c.

Form 59. BOND FOR REPLACING A SUM OF STOCK, AND THE PAYMENT OF ANNUAL SUMS IN LIEU OF DIVIDENDS.

Testatum. 1. KNOW ALL MEN, &c. [*as in Form* 57, *binding A. B. to C. D. in penal sum of* £5,000].

Recital. 2. WHEREAS the above-bounden A. B. has requested the said C. D. to lend to him the sum of £2,300 New Consols, and the said C. D. has sold the same and paid the proceeds thereof, amounting to the sum of £2,500, to the above-bounden A. B. (as he doth acknowledge).

Condition. 3. Now the condition of the above-written bond is such that if the above-bounden A. B., his heirs, executors, or administrators, or any or either of them, shall on or before the [*date*], purchase the sum of £2,300 New Consols, and transfer the same into the name of the said C. D., or of his executors, administrators, or assigns [or into the name or names of such other person or persons as he or they shall

direct], and pay to the said C. D., his executors, administrators, or assigns, in lieu of the dividends thereof, such sums of money as the said C. D., his executors, administrators, or assigns, would have been entitled to receive as the dividends of the said sum of £2,300 New Consols, in case the same had continued standing in his name, at such time as the said dividends would have been payable in case the same had not been sold in manner aforesaid, then the above-written bond is to be void, otherwise to be in full force. **Form 59.**

Signed, &c.

MEMORANDUM OF DISCHARGE OF BOND. **Form 60.**

I, the within-named C. D., hereby acknowledge that the within-named A. B. has this day paid to me all principal moneys and interest intended to be secured by the within-written bond.

Dated the —— of ——, 18—.

[*Signature.*]

CERTIFICATE OF ACKNOWLEDGMENT.

Form 61. CERTIFICATE OF ACKNOWLEDGMENT TO BE INDORSED ON DEED TO WHICH A MARRIED WOMAN IS A PARTY, OTHERWISE THAN IN RESPECT OF HER SEPARATE PROPERTY OR ESTATE.

THIS deed was this day produced before me and acknowledged by A. B. [*or* A. B. and C. D.], therein named, to be her act and deed [*or* their several acts and deeds], previous to which acknowledgment [or acknowledgments] the said A. B. was [*or* the said A. B. and C. D. were] examined by me separately and apart from her husband [*or* their respective husbands], touching her [*or* their] knowledge of the contents of the said deed and her [*or* their] consent thereto, and [each of them] declared the same to be freely and voluntarily executed by her.

AND I declare that I am not interested or concerned, either as a party, or as a solicitor or clerk to the solicitor, for one of the parties or otherwise in the transaction giving occasion for the said acknowledgment.

Dated, &c.

E. F., of, &c. { A perpetual commissioner to take the acknowledgments of married women.[1]

[1] A question has sometimes been raised whether a commissioner can act in any county *except* the one for which he is appointed; and it has been contended that every certificate should be so worded as to show that the acknowledgment took place in the county for which the commissioner was appointed. But this is quite unnecessary. A commissioner may take an acknowledgment in any county. (*Blackman* v. *Blackman*, 3 Ch. D. 633, overruling *Webster* v. *Carline*, 4 Man. & Gr. 27.)

CONDITIONS OF SALE.

Conditions of Sale.—Very Short Form. Form 62.

I. Biddings to be fixed and disputes to be settled by the auctioneer. Biddings, &c.

II. Deposit of 10 per cent. of purchase-money to be paid, and subjoined contract signed at close of auction. Deposit.

III. Title to commence with a purchase deed dated in 1870. Title.

IV. Objections to and requisitions on title not sent in writing to vendor's solicitors within fourteen days from actual delivery of abstract to be considered waived. Requisitions.

V. Tenancies and easements the purchaser is assumed to have knowledge of, and to buy subject to. Tenancies.

VI. Errors in the particular are not to annul the sale, or to entitle either party to compensation. Mistakes.

VII. Identity of property to be considered sufficiently shown by a comparison of the description in the particulars and the muniments of title. Identity.

VIII. Balance of purchase-money to be paid at vendor's solicitors' office on [*date*], and if not then paid, to bear interest thenceforth at 5 per cent. per annum. Completion.

IX. Possession or receipt of rents to be had, and the outgoings discharged by vendor up to and by purchaser from the [*date*], the rents and outgoings, if necessary, being apportioned to that day.[1] Possession.

X. Rights reserved to vendor are— Rights reserved to vendor.

(*a*) To re-offer property in case of dispute amongst bidders.

(*b*) To rescind sale if he cannot or will not remove any objection to or requisition on title, the deposit being returned in full satisfaction of all claims on the purchaser's part.

(*c*) On failure of purchaser to comply with any condition,

[1] Conditions as to receipt, payment and apportionment of rents and outgoings may be inserted after Condition IX. See Form 46, § 11, p. 280, *ante*. Also Form 47, § 9, p. 281.

Form 62.

to retain the deposit, and to resell the property, and to recover from the purchaser as liquidated damages any deficiency in price on and all expenses attending the resale.

Form 63.

CONDITIONS OF SALE OF FREEHOLDS IN SEVERAL LOTS FOR BUILDING.

Biddings.

I. No person is to advance less than £10 at each bidding or to retract a bidding. The highest bidder (subject to a right which is hereby reserved for the vendor to bid by himself or his agents) for each lot shall be the purchaser thereof, and if any dispute shall arise concerning a bidding for any lot, such lot shall be put up again and resold.[1]

Deposit.

II. EACH purchaser is, immediately after the sale, to pay a deposit of £10 per cent. of his purchase-money into the hands of the auctioneers, and sign the subjoined agreement.

Delivery of abstract.

III. THE vendor is to deliver to each purchaser or his solicitor an abstract of title to the property purchased by him, subject to the stipulations contained in these conditions.

Requisitions.

IV. EACH purchaser is, within fourteen days from the actual delivery of the abstract, to deliver at the office of Messrs. ——, Lincoln's Inn Fields, London, W.C., a statement in writing of his objections and requisitions (if any) in respect of the title or the form of or parties to the conveyance, and upon the expiration of such period of fourteen days the title is to be considered as approved of and accepted by the purchaser, subject only to such objections and requisitions (if any), and any objection or requisition not so delivered shall be considered as absolutely waived, notwithstanding any subsequent negotiation or litigation, and time shall in these respects be of the essence of the contract, and if any purchaser shall insist on any objection or requisition which the vendor shall consider himself unable, or on the ground of expense or for any other reason shall decline, to remove or comply with, the vendor shall, notwithstanding any inter-

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[1] Instead of Condition I. the following may be used :—

Biddings.

1. The auctioneer shall, before commencing the sale of each lot, fix the advance to be made on each bidding in respect of that lot, and no person shall retract a bid.

mediate negotiation or litigation (and although he may have insisted that any such objection or requisition is untenable), be at liberty by notice in writing, signed by his solicitors, to rescind the contract, and shall thereupon return to such purchaser his deposit, but without any interest, cost of investigating the title, or other compensation or payment whatever.[1]

Commencement of abstract.

V. The abstract of title shall commence, except as to Lot 2, with an indenture dated the 12th of August, 1882, being a conveyance which contains a recital that the property is free from land tax, and a covenant to erect and maintain fences along the west side of Lot 1 and the south sides of the property forming Lots 1, 9, 10, 11, 12, 13, 14, and 15. Those lots are sold and will be conveyed subject to that covenant, so far as it affects the same respectively.

Title to episcopal land.

VI. Lot 2 was formerly part of the estate of the See of Winchester, and the abstract of title shall commence with the last lease thereof for lives dated, &c., granted by the late bishop [*name*], and with a conveyance dated, &c., of the reversion in fee simple expectant on such lease to trustees for the bishop, with the concurrence of the Church Estates Commissioners.

Land tax.

VII. The property is sold and is believed to be free from land tax, but no purchaser shall require any other evidence of the land tax having been redeemed than the recital mentioned in condition V.[2]

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[1] Sometimes an option is given to the purchaser to withdraw any requisition which the vendor declines to answer. See Form 66, § IV., p. 323, *post*.

[2] One of the following forms may be substituted for Condition VII., if the circumstances render either of them appropriate:—

Land tax.

VIIa. Lots 1 and 2 are sold and believed to be free from land tax, and the purchasers shall not require any evidence of the land tax having been redeemed other than such (if any) as is in the possession of the vendors, and a declaration, to be made (if required) at the expense of the purchasers, that none is now paid.

Land tax.

VIIb. The whole of the property is sold and is believed to be free from land tax, but no evidence thereof shall be required beyond that furnished by the reservation in the above-mentioned lease of rent in respect of redeemed land tax.

For similar condition as to tithes, see Form 64, § XI., p. 316, *post*.

Form 63.

Stamps.

VIII. Should there be any unstamped or insufficiently stamped muniments of title dated prior to the 16th of May, 1888 (which, however, is not known or believed to be the case), the expense of stamping or restamping the same, if required by any purchaser, shall with all consequential expenses be borne by him, and he shall make no objection or requisition in respect thereof.

Easements and compensation.

IX. The property is believed and shall be taken to be correctly described as to quantity and otherwise, and is sold subject to all rights of light, way, and water, and other easements (if any) charged or subsisting thereon, and if any error, misstatement, or omission in the particulars or sale plan be discovered, the same shall not annul the sale, nor shall any compensation be allowed by the vendor or purchasers in respect thereof.[1]

Identity.

X. Each purchaser shall admit the identity of the property purchased by him with that comprised in the muniments offered by the vendor as the title to such property, upon the evidence afforded by a comparison of the descriptions and plans in the particular and muniments.

Completion.

XI. Each purchaser shall pay the remainder of his purchase-money on the 22nd of July next, at the office aforesaid, to the vendor or as he shall direct, and upon such payment the vendor will execute a proper assurance of the property purchased by him to such purchaser, but such assurance and every other assurance and act (if any) which shall be required by the purchaser for any purpose shall be prepared, made, and done by and at his expense, and the expenses of the perusal on behalf of and execution and acknowledgment by all parties (if any) other than the vendor of such assurance shall be borne by the purchaser.

Form of and parties to conveyance.

XII. The assurance to the purchaser of each lot shall contain all such reservations, covenants, and provisions as the vendor or his counsel shall deem proper for giving effect to the stipulations and restrictions contained in Clauses 1, 2, 3, 4, 5, and 6 of the "General Remarks"[2] at the end of the particular, and ensuring that the benefit and burden thereof

[1] Compare Form 65, § VIII., where a right to compensation is given.

[2] See the "General Remarks" at the end of this form, which should be printed with the Particular of Sale.

shall devolve with the property sold and be binding on the purchasers and all future owners and occupiers thereof, without imposing on the several purchasers any personal liability after their respective estates or interests in the property shall have ceased or determined. No purchaser shall be entitled to any covenant or engagement (except as aforesaid) from any other purchaser or from the vendor in respect of any of the stipulations or restrictions aforesaid. The vendor is a mortgagee selling under his power of sale, and will convey as mortgagee, but will not otherwise enter into any covenant. No purchaser shall require the concurrence of any person interested in the equity of redemption.[1] Form 63.

[1] Where the vendors are trustees, one of the following forms may be used:—

XIA. The vendors are trustees selling under a power of sale, and the purchaser shall not require any evidence that the event in which such power is exerciseable has arisen, except a statutory declaration to that effect to be made (if required) by one of the vendors at the expense of the purchaser, nor shall he require for any purpose the concurrence of any person beneficially interested. Sale by trustees under power.

XIB. The vendors are trustees selling under a power of sale in the will of the late J. N., Esq. On the [*date*] an action (N. *v.* N., 187-, N. No. 98), was commenced in the Chancery Division of the High Court of Justice, to obtain the sanction of the Court to a compromise relating to certain real estate of the testator not comprised in the present sale, and the plaintiffs claimed in the alternative a declaration of the rights of the plaintiffs and defendants in such real estate, and also administration of the testator's real and personal estate, if and so far as necessary for the purposes aforesaid. An order was made sanctioning such compromise. No purchaser shall require the sanction of the Court to be obtained to the present sale, or make any objection or requisition in respect thereof, or in respect of such action or any of the proceedings therein, or the effect thereof, nor require the concurrence in his conveyance of any of the persons beneficially interested. The vendors will convey "as trustees," but will not otherwise enter into any covenant. Chancery proceedings.

XIC. Some of the vendors are trustees with power of sale Conveyance by trustees.

Form 63.

Possession. XIII. Possession will be retained and the outgoings discharged by the vendor up to the said 22nd of July next, and as from that day the same shall be respectively taken and discharged by the purchasers. The outgoings shall, if necessary, be apportioned for the purpose of this condition.

Interest. XIV. If from any cause (other than the wilful default of the vendor) the purchase of any lot shall not be completed on the said 22nd of July, the purchaser thereof shall pay interest on the remainder of his purchase-money at the rate of £5 per cent. per annum from that day to the day of actual completion.

Deeds. XV. The muniments of title relate to the property offered for sale and also to other property belonging to the vendor, and will therefore be retained by him, and he will give the usual acknowledgment, but no undertaking for safe custody.[1]

Default. Lastly. If any purchaser shall fail to comply with the above conditions his deposit shall be forfeited and the vendor shall be at liberty to resell the property at such time, in such manner, and subject to such conditions as he may think fit, and any deficiency in price which may happen upon, and all

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of an undivided moiety of the property, and they will convey "as trustees," and shall not be required to give any covenant other than the covenant against incumbrances implied by such conveyance.

[1] Where the property is not in hand, § XIX. of Form 64, p. 320, *post*, will be substituted.

Where the vendor does not retain any part of the property, one of the following forms may be used:—

Deeds. XVa. The purchaser of the largest part in value of property held under the same title shall be entitled, after the completion of the sale of all such property, to the custody of the muniments of title relating thereto, and shall give to the other purchaser or purchasers of such property an acknowledgment of right to production and an undertaking for safe custody of the same under § 9 of the Conveyancing Act, 1881. If any lot shall not be sold at this sale, the vendor shall retain the said muniments until all the lots shall be sold, and the purchasers of the lots sold shall in the meantime be entitled at their own expense to the production of such muniments and to copies of them.

expenses attending the resale, shall immediately afterwards be paid by such purchaser to the vendor, and in case of non-payment shall be recoverable as liquidated damages. Form 63.

General Remarks

As to roads, building fences, &c., to be printed at end of particular annexed to the foregoing conditions. Form 63a.

I. The vendor will include in the sale All such rights of way as he may possess over that portion of the new road shown on the sale plan, lying between the points B. and C. marked on such plan. Rights of way.

II. The site of the proposed road, shown on the sale plan, and thereon marked A B, which at present affords access to the various lots, has already been excavated and shaped, and the road has been partially constructed and planted on each side with young trees. Each purchaser shall metal and complete the moiety adjoining his lot of so much of such proposed road as is co-extensive with the frontage of such lot thereon, within three months of the date fixed for the completion of his purchase, and shall maintain such moiety in good order until the road be taken over by the proper authorities. Road making.

III. The vendor will include in the conveyances to the several purchasers respectively, the adjoining moiety of so much of the site of the proposed road A B as is co-extensive with the frontages of their respective lots thereon, subject to the same being reserved for a road, and to all rights which the owners, lessees, or under tenants of St. Philip's Lodge, The Bungalow, Hilcote, Melton Lodge, Highcroft, and the adjoining lands, formerly part of this estate, may possess over such proposed road, and also to a free right to the owners or occupiers of any of the lots now offered for sale to use the said road, and to lay down gas or water pipes or sewers under the said road, making good the surface of the same immediately afterwards. Roads.

IV. No buildings other than private residences (or stabling, or other usual appurtenances for use therewith) shall be erected on any lot, nor shall any buildings erected thereon be at any time used otherwise than as private residences (or stabling or other usual appurtenances for use therewith), and Buildings.

Form 63a. no residence shall be erected on any lot of a less annual rateable value than 60*l.* (irrespective of stabling and appurtenances).

Building line. V. No buildings, except frontage or boundary walls, or fences or gateways, shall be erected upon the several lots within 30 feet of the proposed road A B[1].

Fences. VI. Each purchaser shall erect within three months of the date fixed for the completion of his purchase, and for ever after maintain, suitable boundary fences, or walls, on the side or sides, marked T on the annexed plan, of the lot or

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[1] The following clauses may be used instead of Clauses 4 and 5, where suitable; or they may be used as Special Conditions:—

Building estate. Restrictions. Va. The sale is subject to the following conditions and stipulations for the benefit and protection of the property, and the owners, lessees, and tenants thereof for the time being, namely:—

Building line. (1.) That the line of frontage of the buildings on the several lots shall not approach nearer to any of the roads or projected roads shown on the sale plan than 30 feet.

Buildings. (2.) That no building shall at any time be erected on any lot other than a dwelling-house (or, in the case of lot 2, a public-house, and of lots 2, 3, and 4, a shop or shops), with or without stabling, greenhouses, and other offices suitable for occupation therewith, at a cost of not less than 300*l.*, in the case of lots 17 and 18 respectively, and 400*l.* in the case of every other lot, exclusive of out-buildings.

Trades. (3.) That no building to be erected upon any lot shall be used as a manufactory, mill, gasworks, hospital, asylum, or (except upon lot 2) hotel, tavern, or beerhouse, or (except upon lots 2, 3, and 4) shop; and that none of the lots, or the buildings to be erected on the same respectively, shall be used for any offensive, noisy, or dangerous pursuits or operations, or any purpose which shall be in any way a nuisance, damage, or annoyance to the owners or tenants of any of the adjoining lots, or of any neighbouring property now belonging to the vendors.

lots purchased by him; and if any purchaser shall fail to erect any such fence or wall as aforesaid within three months of the completion of his purchase, the purchaser of the adjoining lot (or in the absence of sale thereof the vendor) shall be at liberty forthwith to erect such fence or wall, and the purchaser so failing shall, on demand, repay to such adjoining purchaser or the vendor, as the case may be, all moneys expended for the purpose aforesaid, and all expenses relating thereto.[1] Form 63a

[1] One of the following clauses may be used instead of § 6 and parts of §§ 2 and 3, or as a special condition:—

VIa. Each purchaser shall, within six calendar months from the day of sale, make, and for ever after maintain, proper boundary walls or suitable fences, of such height and design as shall be prescribed by the vendors, on the sides marked T of the lot or lots purchased by him, and shall, according to, and to the extent of, his frontage towards the roads and projected roads shown on the sale plan, contribute, with the owners for the time being of the other lots comprised in this sale and having such frontage, to the expense of making and forming the projected roads shown on the sale plan, into roads fit for pedestrians, carts, waggons, and carriages, and shall, until the same and the existing roads shown on the said plan shall respectively be adopted as public highways, contribute in the proportions aforesaid towards the expense of repairing and maintaining all the roads and projected roads shown on the said plan. A right of way over all the said roads and projected roads is included in the sale of each lot [except that no right of way over the projected road on the west of lots 21, 26, and 27 is included in the sale of any lot other than lots 21, 26, and 27, and as to lot 27 such right of way is restricted to the portion of the said road upon which lot 27 abuts]. Fences, roads, &c.

VIb. If the property shall not be sold in one lot, the purchaser of lot 1 shall, within six calendar months after the day of sale, make, and for ever maintain, proper boundary walls on his lot on the northern and western sides thereof, and the purchasers of lots 1 and 2 shall, according, and in proportion, to the extent of their respective frontages upon the intended new road on the western side thereof, coloured Fences and roads.

Form 63a.

VII. The vendor shall be in no way liable to require any arrangements between the several purchasers as to roads, fences, or buildings to be carried out, and in the event of any of the lots not being sold, the vendor shall not be considered to stand in the position of purchaser with regard to fences and roads in respect of any unsold lots.[1]

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brown in the plan, contribute with the owner for the time being of lot 3 to the expense of making and forming the said intended road into a road properly metalled and fit for carts, waggons, and carriages, with such main sewers or drains under the same as shall, by the District Council or other competent authority, be required to be made, and shall at all times thereafter contribute in the proportion aforesaid towards the expense of repairing and maintaining the same road, a right of way over which shall be included in the sale of each lot, viz., lots 1, 2, and 3. The purchaser of lot 3 shall in like manner make and maintain a similar wall on his lot on the eastern side thereof, and shall contribute one moiety of the expense of making and maintaining the intended new road aforesaid. The purchaser of lot 2 shall in like manner make and maintain a similar wall on his lot on the northern and western sides thereof, and the purchasers of lots 2 and 3 shall, in addition to their respective contributions to the expense of the new road aforesaid, at their joint expense, in like manner make and maintain the whole of the intended new road on the northern side of lot 2, coloured brown on the plan, but a right of way over the last-mentioned road shall be included in the sale of each lot, viz., lots 1, 2, and 3.

Fences.

VIc. Where there is no existing fence between any portions of two adjoining lots, the purchaser of the larger of such lots in value shall, if and when required by the vendor, erect and afterwards maintain a substantial fence between such lots. If either of such lots is not sold at this sale, the purchaser of the lot sold shall erect and maintain such fence.

[1] The following alternative clause may be used instead of § 7, where the vendor is willing to undertake the liabilities which it imposes:—

VIIa. If any lot be not sold, the vendors shall, for the purpose of this condition, stand in the place of the purchaser thereof, and the respective purchasers shall, if required, enter

VIII. The plan is taken from actual survey, and with the measurements, areas, and descriptions, is believed to be and shall be taken as correct.[1] **Form 63a.**

IX. There is a tithe rent-charge on the property now offered for sale, together with the adjoining properties known as St. Philip's Lodge, The Bungalow, Melton Lodge, and Hilcote, and the adjacent lots already disposed of, commuted at 9*l.* 8*s.* 6*d.* per annum. The purchasers and lessees of some of the other properties have covenanted to pay their proportions, but the same have not been legally apportioned. The purchasers of the several lots now offered for sale will have to apportion the shares payable in respect of their respective purchases at their own expense.[2] Apportionment of tithe rent-charge.

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into covenants in their respective conveyances (which shall in that case be executed in duplicate) with the vendors, or by separate deed with each other, to perform the stipulations mentioned in this condition, but the vendors shall not be bound to enforce or effectuate this condition or the liabilities mentioned therein, further or otherwise than by compelling such covenants to be executed as aforesaid.

[1] The following alternative clause may be used :—

VIIIa. The plans attached to the particulars are believed to be correct, but the vendor does not guarantee their accuracy. Plans.

[2] The following clauses are sometimes useful, either as "General Remarks" or conditions; but they are not applicable to the case of a sale of land for building purposes :—

(a) Where the same tenant holds at an entire rent property included in two or more lots and has not given or received notice to quit, the vendor reserves the right at any time before the actual completion of the purchase of the property held by such tenant to give notice to the tenant to quit the property held by him, and such notice may be given by the vendor, either in his own name or as agent for the purchaser or purchasers of such property, and such purchaser or purchasers shall, if required by the vendor, join in giving such notice. Tenancies.

(b) Such fixtures and fencing as belong to the vendor will Fixtures.

Form 63a.

Disputes.

X. In the event of any dispute arising as to the boundaries or fences, the site or construction of the proposed road, or otherwise, the matter shall, in all cases, be referred to A. B., of, &c., whose decision shall be binding and final, and the cost of such reference shall be borne by all or any of the disputants as the said A. B. may direct.[1]

Form 64.

CONDITIONS OF SALE OF FREEHOLDS AND COPYHOLDS IN SEVERAL LOTS WITH VARIOUS SPECIAL STIPULATIONS.

Bidding.

I. No person is to advance at each bidding less than the sum which shall be fixed by the auctioneer at the time of sale, or to retract a bidding. The highest bidder (subject to a right which is hereby reserved for the vendors to bid by themselves or their agent) shall be the purchaser: and if any dispute shall arise concerning a bidding, the property shall be put up again and resold.[2]

Deposit.

II. Each purchaser is immediately after the sale to pay a

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be included in the sale, and the growing timber on the farms will be included in the sale.

Minerals.

(c) The minerals and other substances under each lot, lying at a greater depth from the surface than 20 feet, are excepted out of the sale, and full powers of getting the same, either alone or in conjunction with other minerals by underground workings only, will be reserved by the conveyance.

Alteration of lots.

(d) The vendor reserves the right, either before or at the auction, to alter the mode of lotting, and to amalgamate or subdivide any lot or lots, and to vary the order of sale, and to withdraw any lot or lots or parts of lots.

[1] The following stipulation is often useful, but must be used with caution:—

Release from restrictions.

Xa. The vendor, his heirs or assigns, may at any time before the whole of the lots now offered for sale shall have been disposed of release any lot or lots, and the owner or owners thereof, from all or any of the foregoing stipulations [with the consent of the owners for the time being of any houses within 80 yards from such lot or lots] or otherwise consent to any modification thereof.

[2] See also clauses as to biddings in Form 63, p. 300, *ante*.

deposit of 10*l.* per cent. of his purchase-money to the auctioneer, and sign the subjoined agreement.

Abstract.

III. The vendors are to deliver to each purchaser or his solicitor an abstract of title to the property purchased by him, subject to the stipulations contained in these conditions.[1]

Requisitions.

IV. Each purchaser is, within fourteen days from the actual delivery of the abstract, to deliver at the office of Messrs. A. & B., No. 1, X. Street, in the city of London (the vendors' solicitors), a statement in writing of his objections and requisitions (if any) in respect of the title or the form of, or parties to, the conveyance; and upon the expiration of such period of fourteen days the title is to be considered as approved of and accepted, subject only to such objections and requisitions (if any), and a similar statement is to be delivered within seven days after the delivery of answers to any previous statement (whether such answers do or do not include a supplemental abstract), and every objection or requisition not so delivered shall be considered as absolutely waived, notwithstanding any subsequent negotiation or litigation, and time shall in these respects be of the essence of the contract [and for the purpose of any requisition an abstract shall be deemed perfect if it supply the information suggesting the same, although otherwise defective]. If any purchaser shall insist on any objection or requisition which the vendors shall consider themselves unable, or, on the ground of expense, or for any other reason, shall decline to remove or comply with, the vendors shall, notwithstanding any intermediate negotiation or litigation (and although they may have insisted that such objection or requisition is untenable), be at liberty by notice in writing signed by their solicitors to rescind the contract, and shall thereupon return to such purchaser his deposit, but without any interest, cost of investigating the title, or other compensation or payment whatever.[2]

[1] This condition formerly provided that no purchaser of two or more lots held under the same title should be entitled to more than one general abstract except at his own expense. But now see 44 & 45 Vict. c. 41, s. 3 (7); R. P. Stat. 191.

[2] Compare the shorter § IV. of Form 63, p. 300, *ante*.

Form 64.

Commencement of abstracts.

V. The abstracts shall commence as follows[1]:—

(*a.*) As to Lot 1 (except the field numbered 111 on the sale plan) and the whole of Lots 6 and 7, with an indenture of conveyance and covenant to surrender, dated the 18th of October, 1854.

(*b.*) As to parts of Lot 2, with an indenture of conveyance and covenant to surrender dated the 29th of September, 1843, and as to the remaining parts of Lot 2 (except the field numbered 190 on the sale plan), with a covenant to surrender, also dated the 29th of September, 1843.

(*c.*) As to the part of Lot 1 numbered 111, and the part of Lot 14 numbered 101, on the sale plan, and the whole of Lots 3, 4, 5, 9, 10, 11, 12, 13, 16, and 17, with a general devise contained in the will, dated the 3rd of January, 1866, of C. D., who died in 1868.

(*d.*) As to the remaining part of Lot 14, with a general devise contained in the will, dated the 18th of August, 1849, of C. K., who died in September, 1849.

(*e.*) As to Lot 8, with an indenture of conveyance and covenant to surrender dated the 9th of January, 1873.

(*f.*) As to Lot 15, with a surrender on the 9th of October, 1855, by E. F., to the use of C. D.

(*g.*) As to the part of Lot 2, numbered 190, and the whole of Lots 18 and 19, with an indenture of conveyance and covenant to surrender, dated the 20th of June, 1880.

(*h.*) As to the greater part of Lot 20, and the whole of Lot 21, with a certificate under the seal of the Office of Land Registry of the registration on the 25th of March, 1868, of the indefeasible title in fee simple of C. D.

(*i.*) As to another small portion of Lot 20 (formerly a cottage and yard), with an indenture dated the 2nd of September, 1871, and as to the remaining

[1] In this case the property had been purchased at various times from different persons; and it was, therefore, necessary to make very special stipulations as to the commencement of the abstracts.

part of Lot 20 (formerly also a cottage), with an indenture dated the 1st of March, 1856.

(*j.*) As to the freehold part of Lot 22, with an indenture dated the 25th of March, 1878. As to the freehold part of Lot 23, with indentures of lease and release, dated respectively the 7th and 8th of May, 1819.

(*k.*) And as to the copyhold parts of Lots 22 and 23, with the admittance on the 25th of October, 1852, of C. D.[1]

Titles commencing with wills.

VI. As regards every lot or part of a lot, the abstract of title to which is to commence with a will, the purchaser thereof shall assume, without proof, that the testator was seised of that lot or part of a lot in fee simple [or for an estate to him and his heirs according to the custom of the manor of which the property (if then copyhold) was held, as the case may be] at his death, and that the property passed

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[1] The following clause is sometimes useful:—

Title to parish property.

V. In the year 1870 the vendor bought the property, and now sells it subject to the following condition, namely, that it was acquired by the parish of X., in or about the year 1856, in exchange for other parish property near X., given up by the parish. A statement of facts collected from the entries in the vestry and other parochial minute books, and from the court rolls of the manor of Y., relating to the property, with a copy of the opinion of counsel thereon as to the power of the parish to sell the premises, may be seen by the purchaser before the sale, at the offices of Messrs. A. B. & Co., at, &c.; and a copy of such statement and opinion will be furnished to the purchaser if required, at his or her expense, but the purchaser must accept the title of the parish thereto without further investigation, and without requiring the vendor to give any further evidence or proof of title whatever, or proof of any statement contained in the case submitted to counsel as aforesaid; and the abstract of title to be furnished by the vendor shall commence with a conveyance from the guardians, churchwardens, and overseers of the parish of X., dated, &c., and such shall be accepted as sufficient root of title.

Form 64.

by the general devise in such will. The vendors will, however, if required, furnish to any such purchaser, at his request and expense, a statutory declaration that the persons deriving title under such will have been in possession or receipt of the rents of such property for twenty years prior to the day of sale.[1]

Option to purchasers to have earlier abstracts.

VII. The title to the greater part of the X. property was investigated in the year 1885, and the title to the remaining part thereof in 1888 on behalf of mortgagees; and the said indentures of the 20th of June, 1880, and the 25th of March, 1878, respectively, deduce the prior titles by recital, as to the said indenture of the 20th of June, 1880, from the will dated the 13th of March, 1858, of a testator who died in 1867; and as to the said indenture of the 25th of March, 1878, from the year 1864; and the stipulated commencements as to the property comprised therein respectively are fixed in order to prevent unnecessary expense to the vendors. They will, therefore, if required by any purchaser of such property, deduce the earlier title so recited upon payment by him of the expenses thereby occasioned to them (including the cost of making the abstract). The purchaser of Lot 8 may also upon the same terms have an abstract of the earlier title to that lot, commencing with the said will of the said C. K. If any purchaser shall exercise his option of calling for such earlier title, he shall do so by leaving notice in writing signed by him at the office aforesaid, within three days after delivery to him or his solicitor of such abstract as he is entitled to at the vendors' expense, such notice to contain an undertaking

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[1] The following shorter clauses may in some cases be used:—

Title commencing with will.

VIa. The abstract of title shall commence, as to lots 3 and 4, with a devise expressed in general terms (but with reference to the locality) in the will dated, &c., and proved in the following year, of A. B., whose seisin in fee simple at the time of his death shall be presumed.

Title commencing with will.

VIb. The title shall commence with a devise expressed in general terms (but with reference to the locality) in the will dated the 13th of May, 1854, of a testator who died in 1857, and the purchaser shall assume, without proof, the seisin of such testator, and that the property passed by the devise.

to receive and pay on delivery for such earlier abstract, and also to pay the whole of the expenses of and incident to the verification thereof.[1] Form 64.

[1] Other conditions, giving a similar option in the case of property of small value, are as follows :—

VIIA. As respects any lot, the purchase-money of which will not exceed 100*l.*, the purchaser, except at his own expense, shall be entitled only to a short abstract commencing with the will of A. B., who died in 18—, and whose seisin in fee simple at his death shall be presumed without proof; but such purchaser may, at his own expense, have an abstract of such prior title (if any) as he would be entitled to an abstract of in case his purchase-money exceeded 100*l.* The vendor will furnish to the purchaser of any lot, the purchase-money of which is not more than 100*l.*, a conveyance of such lot in a short form at a cost of 2*l.* 2*s.* for each conveyance, exclusive of the stamp duty. Short abstracts for small lots.

VIIB. In every case where, under the previous condition, the purchaser may, if he pleases, have an abstract of the prior title at his own expense, such option, if exercised by him, shall be so exercised by his leaving a notice in writing to that effect at the office aforesaid within seven days after the delivery of such abstract as under these conditions he is entitled to at the vendor's expense; such notice to be signed by the purchaser, and to contain an undertaking to receive such abstract of prior title and to pay on delivery for the same. Prior title at purchaser's expense.

VIIC. In the year 1882 the vendors advanced a large sum on mortgage of the property, and on the occasion of such advance the title from the 11th of November, 1825, was fully investigated, of which fact a statutory declaration, to be furnished, if required, at the expense of the purchaser requiring the same, shall be sufficient evidence. In order to save unnecessary labour and expense, the title shall commence with an indenture dated the 13th of February, 1869, being a conveyance to A. B. in fee simple. But the vendors will, if required by any purchaser, deduce the earlier title, commencing with indentures of lease and release, dated respectively the 10th and 11th November, 1825, upon Short title. Recent investigation by mortgagees. Prior title at purchaser's expense.

Form 64.

Recitals to be evidence.

VIII. Every deed, entry on Court roll, and other document dated more than twelve years prior to the day of sale, shall be conclusive evidence of all matters and conclusions of law recited, stated, noticed, assumed, or implied therein, or in any indorsement or memorandum thereon.[1]

Dower.

IX. Each purchaser shall assume that every former owner of any part of the property, whose widow (if any) might be entitled to dower, and is not mentioned in the title, was unmarried at the time when he died, or ceased to be the owner of the estate which might otherwise have conferred such right to dower.

Stamps.

X. Should there be any unstamped or insufficiently stamped muniments of title dated prior to the 16th of May, 1888, the expense of stamping or restamping the same, if required by any purchaser, shall with all consequential expenses be borne by him, and he shall make no objection or requisition in respect thereof.

Tithes.

XI. As to any lots described in the particulars as tithe free, no purchaser shall be entitled to require any evidence that the property is tithe free, except a declaration that no tithe or rent-charge in lieu of tithe has for twenty years past been paid in respect thereof.[2]

Chancery proceedings.

XII. All facts or matters admitted, proved, or proceeded on in any Chancery proceedings, or certified by the chief clerk of the judge to whose branch of the Court such proceedings were assigned, shall be deemed thereby conclusively evidenced;

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payment, by the purchaser requiring the same, of the expenses thereby occasioned (including the cost of making the abstract of such earlier title). If any purchaser shall exercise his option of calling for such earlier title, he shall do so by leaving notice in writing, signed by him, at the office aforesaid, within seven days after delivery to him or his solicitor of such abstract as he is entitled to, at the vendor's expense, such notice to contain an undertaking to receive and pay on delivery for such earlier abstract, and also to pay the whole of the expenses of and incident to the verification thereof.

[1] Compare the statutory provision contained in § 2 (2) of the Vendor and Purchaser Act, 1874; R. P. Statutes, 189.

[2] For similar conditions as to land tax, see Form 63, § VII., and notes thereto, p. 301, *ante*.

and no objection or requisition shall be made on the ground of the absence or imperfection of any covenants for title [or covenants for production of muniments of title].[1]

Description and identity.

XIII. Every lot shall (unless conclusive evidence to the contrary be shown) be taken to have been correctly described in the foregoing particulars thereof as to tenure, quantity and outgoings, and the vendors shall not be bound to identify any lot with any description thereof in the deeds or court rolls, nor shall the vendors be required to identify, set out, or distinguish the copyhold parts of any lot from the freehold parts thereof,[2] nor the copyhold parts holden under one manor from those holden under any other manor or manors, and in case any lot is held under more than one title, the vendors shall not be required to distinguish the part or parts thereof held under each title; and no other evidence shall be required to identify the different messuages or lands, or to connect the present with any general and ancient description of them than the evidence afforded by the deeds in the vendors' possession; but if any misstatement or error as to tenure, quantity, or outgoings of any lot has been made in such particulars, such misstatement or error shall not vitiate or annul the sale, but compensation to be fixed by two indifferent persons (one to be named by the vendors and the other by the purchaser), and in case of the disagreement of such two persons, by an umpire to be chosen by them, shall be given or taken as the case may require.

Mistake as to root of title.

XIV. In case as respects any portion of the property which is supposed and is hereinbefore stated to be held under some one in particular of the several hereinbefore stipulated commencements of title, it shall appear upon investigation of the

[1] As to the last part of this condition, see § 2 (3) of the Vendor and Purchaser Act, 1874. See also § 9 of the Conveyancing Act, 1881.

[2] Sometimes the following clause is sufficient:—

Freeholds and copyholds.

XIII. The purchaser of Lot 1 shall assume that the copyholds comprised in the admittance of [*date*] form part of that lot; and he shall make no objection founded on any want of apparent identity, nor require the vendors to show which portion of such lot is the freehold or copyhold portion respectively.

Form 64.

title by the purchaser that the same or any part or parts thereof is or are in fact held under some other or others of the said stipulated commencements of title, no objection or requisition shall be made by the purchaser on that account.[1]

Burdens and easements.

XV. The property is sold subject to all chief and other rents, rights of light, way, and water, and other easements (if any), charged or subsisting thereon, and part of Lot 22 (viz., No. 1046 on the sale plan) is sold subject to a restrictive covenant against obnoxious trades.[2]

Terms of tenancies.

XVI. As respects those tenements, the tenants of which hold under leases or written agreements, such leases or agreements, or copies thereof, will, if required, be produced at the sale, and the purchasers shall therefore be deemed to buy with full notice of their respective contents and effect. As respects those tenements, the tenants of which do not hold under written agreements, the purchaser shall be satisfied with such evidence of the terms of the tenancies as the vendors may be able to adduce. And the expense of stamping or restamping any unstamped or insufficiently stamped lease, counterpart, agreement, or duplicate thereof, dated prior to the 16th of May, 1888, shall be borne by the purchaser requiring the same. And as to the apportionment of rents, taxes, or other outgoings, every purchaser shall be satisfied with the statement (if any) in the particulars, and shall not make any objection or requisition in respect of the legal validity of the apportionment of the said rents, or in anywise in relation thereto, or in respect of any covenants or provisions contained in the leases or agreements. And the purchaser shall also be deemed to buy with full notice of the tenants' rights (if any) as to fixtures and tenant-right, and of the state of the different tenements as respects repairs, insurance, and all other matters.[3]

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[1] Compare the shorter clause in Form 63, § X., p. 302, *ante*.

[2] Where the titles to the separate lots are clear, Conditions IX. and X. of Form 63, p. 302, *ante*, may be used instead of Conditions XIII., XIV., and XV. in this precedent.

[3] In simple cases the following clause is sufficient:—

Tenancies.

XVIA. The purchaser shall be satisfied with such evidence of the terms of the tenancies as the vendors may be able to adduce, and shall be deemed to buy with full notice of the

Form 64.

Discharge of incumbrances.

XVII. No purchaser shall require any incumbrance to be discharged otherwise than by the incumbrancer joining in such purchaser's conveyance, or make a claim for costs in reference thereto, nor require from any conveying party any further or other covenant than will be implied by his conveying "as trustee" or "as mortgagee," the vendors being trustees for sale.[1]

Completion.

XVIII. Each purchaser shall pay the remainder of his purchase-money on the 24th of June next at the office aforesaid to the vendors, or as they shall direct, and upon such payment the vendors and all other necessary parties (if any) will execute a proper assurance of the property purchased by him to him, or as he shall direct, but such assurance and

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tenant's rights (if any) as to fixtures and of the state of the property as respects repairs, insurance (if any) and all other matters.

[1] This condition will be replaced by Condition IX. of Form 70, p. 345, if the property is not in mortgage.

The following clause was used on a sale by trustees of a voluntary settlement, when the settlor had become bankrupt.

Validity of voluntary settlement.

XVIIa. The vendors are trustees of a voluntary settlement dated the 12th of August, 1871, containing powers to invest in the purchase of and to sell land. A bankruptcy petition was filed against the settlor in 1874, and his affairs were liquidated by arrangement thereunder, the proceedings being closed in 1880. The existence of the said voluntary settlement was disclosed in his statement of affairs, and no steps were ever taken to impeach the validity thereof. The purchaser shall assume that, throughout the said liquidation proceedings, the parties claiming under the said voluntary settlement were in a position to prove that the settlor was, at the time of making the said settlement, able to pay all his debts without the aid of the property comprised in such settlement, and that such settlement was and is valid; and he shall not require any evidence of such ability or validity, nor require the concurrence of the trustee in liquidation, or of any person beneficially interested under the said settlement, nor make any objection or requisition founded upon or in respect of the said petition or liquidation proceedings.

Form 64.

every other assurance and act (if any) which shall be required by any purchaser for any purpose shall be prepared, made, and done by and at his expense, and the expenses of the perusal on behalf of and execution [and acknowledgment] by all parties (if any), other than the vendors of such assurance, shall be borne by the purchasers.

Rents and outgoings.

XIX. The rents will be received and the outgoings discharged by the vendors up to the said 24th of June next, and as from that day they shall be respectively taken and discharged by the purchasers. Such rents and outgoings shall, if necessary, be apportioned for the purpose of this condition.[1]

Interest.

XX. If from any cause (other than the wilful default of the vendors) any purchase shall not be completed on the said 24th of June next, the purchaser shall pay interest on the remainder of his purchase-money at 5*l.* per cent. per annum from that day to the day of actual completion.

Deeds.

XXI. Such of the deeds and muniments of title in the possession of the vendors as relate exclusively to any of the lots will, upon completion of the sale of the lot or lots to which the same relate, be delivered to the purchaser of the lot, or, as the case may be, the largest purchaser in value of the lots to which the same relate, but every purchaser to whom any deeds or muniments relating to other lots or another lot shall be so delivered shall, if required in that behalf, give to the purchaser or purchasers of such other lot or lots an acknowledgment of the right of such purchaser or purchasers to production and delivery of copies of such deeds and muniments, and also an undertaking for the safe custody thereof, to be prepared by and at the expense of the person requiring the same, who shall also pay the expenses attending its perusal and execution by and on behalf of the person giving the same and all other necessary parties (if any), and no purchase shall be delayed with a view to giving or procuring any such acknowledgment or undertaking. In the meantime the vendors will retain such deeds and muniments, and will produce the same and all such deeds and muniments as do not relate exclusively to the said lots or any of them

[1] If the property is in hand, § XIII. of Form 63, p. 304, *ante*, will be used.

to and at the expense of the several purchasers, but will not enter into any covenant or give any acknowledgment or undertaking in relation thereto. Form 64.

Default.

LASTLY. IF any purchaser shall fail to comply with the above conditions his deposit shall be forfeited, and the vendors shall be at liberty to resell the property at such time, in such manner and subject to such conditions as they may think fit, and any deficiency in price which may happen upon and all expenses attending any such resale shall immediately afterwards be paid by such purchaser to the vendors, and in case of non-payment shall be recoverable as liquidated damages.

CONDITIONS OF SALE OF FREEHOLD GROUND RENTS. Form 65.

I. } Bidding.
II. } Deposit.
III. } *These will be the same as in Form* 63 *or* 64. Abstract.
IV. } Requisitions.

V. THE title of the vendor to the several lots shall commence with a conveyance from [A. B., dated, &c.]. Commencement of abstract.

VI. THE several leases mentioned in the particular of sale shall be assumed to be valid and well granted, and the counterparts thereof are the only evidence which will be supplied of the creation of the several ground rents or the remedies for securing the payment thereof respectively.[1] Title to ground rents.

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[1] The following is an alternative form :—

VIA. INASMUCH as the originals, copies or counterparts of the said leases, and of the underleases by which the ground rents mentioned in the particular are secured, will be produced, and may be seen at any time prior to the day of sale at the office aforesaid, the purchaser shall be deemed to have full notice of their respective contents and effects, and of the variance (should any such there be) between the terms of such leases and underleases respectively. Leases and underleases to be produced.

The following special conditions can be used if the circumstances render them appropriate.

VIB. No purchaser shall be entitled to call for the production of, or make any objection on account of the non-production of, any abstracted muniments of title of which the vendor shall produce attested copies. Production of deeds.

Form 65.

[One of such leases comprised two houses at an entire ground rent of 12*l.*, and the purchaser of lot 1 shall assume without evidence that the said ground rent has been properly and legally apportioned between lot 2 and the other house comprised therein].

Identity.

VII. No evidence shall be required for identifying any of the lots with the description, either general or particular, in any of the abstracted deeds or other documents, or in the printed particular.

Loss of deed.

VIc. An indenture whereby A. B. (one of the original lessees) is believed to have released his interest in the property to his co-lessees, C. D. and E. F., cannot now be found, and the vendors have no attested or other copy of such deed. The vendors will (if required) obtain a statutory declaration that for upwards of twenty years prior to the day of sale the rents of the property have been received by the vendors, or the persons through whom they claim, and the purchaser shall presume that the interest of the said A. B. was duly assured to the said C. D. and E. F., and that the legal estate in the property was on the [*date*] vested in the said E. F. [*the survivor*] alone.

Mortgage to trustees for a bank.

VId. Lots 1 and 2 appear to have been mortgaged in the year 1866 to persons who are described as trustees for the X. bank. These mortgages were paid off or discharged in the year 1872. It shall be assumed (as is believed to be the fact) that the parties receiving and giving discharge for the mortgage moneys were competent so to do, and no abstract, copy, or extract of or from any deed of settlement or other documents of or relating to the said bank or the constitution thereof or the appointment of the trustees shall be required.

Mortgage to trustees for building society.

VIe. Lot 2 appears to have been mortgaged in the year 1863 to persons who are described as trustees for a benefit building society. These mortgages were paid off or discharged in the year 1869. It shall be assumed (as is believed to be the fact) that the persons receiving and giving discharges for the mortgage moneys were competent so to do, and no abstract, copy, or extract of or from any deed of settlement, rules, or other documents of or relating to the said society, or the constitution thereof, or the appointment of the trustees, shall be required.

Form 65.

VIII. If any error, misstatement, or omission in the particular shall be discovered, compensation shall be allowed or given by the vendor or purchaser, as the case may require; and such compensation shall be settled, regard being had to the amount of the purchase-money, by the auctioneer at the present sale.[1] Compensation.

IX. On payment of the remainder of the purchase-money, on [*date*], the vendor will execute a proper conveyance to the purchaser of the lot or lots sold, subject to the existing lease or leases thereof, such conveyance to be prepared by the purchaser's solicitor at his expense, and the engrossment thereof with the draft to be left at the office of the vendor's solicitor three days prior to the day fixed for completion. Completion.

Lastly. If any purchaser shall fail to [*&c., as in last condition in Form* 63, *p.* 304]. Default.

[The contract may be taken from Form 66, p. 331.]

Conditions of Sale of a Freehold House in Middlesex or Yorkshire (with possession), in one Lot, with Special Stipulations. Form 66.

I. No person is to advance less than 10*l.* at each bidding or to retract a bidding. The highest bidder (subject to a right which is hereby reserved for the vendors to bid by themselves or their agents) shall be the purchaser, and if any dispute shall arise concerning a bidding the property shall be put up again and re-sold. Bidding.

II. The purchaser is immediately after the sale to pay a deposit of 10*l.* per cent. of his purchase-money to the auctioneers and to sign the subjoined agreement. Deposit.

III. The vendors are to deliver to the purchaser or his solicitor an abstract of the title to the property subject to the stipulations contained in these conditions. Delivery of abstract.

IV. The purchaser is within twenty-one days from the Requisitions.

[1] Where no compensation is to be paid, § IX. of Form 63, p. 302, *ante*, should be used.

Form 66.

actual delivery of the abstract to deliver at the office of [Mr. A. C., No. 7, F. Street, in the City of London], a statement in writing of his objections and requisitions (if any) in respect of the title, or the form of or the parties to the conveyance; and upon the expiration of such period of twenty-one days the title is to be considered as approved of and accepted by the purchaser, subject only to such objections and requisitions (if any); and a similar statement is to be delivered within seven days after the delivery of answers to any previous statement (whether such answers do or do not include any supplemental abstract), the title being considered as approved of and accepted, except as appearing by such similar statement; and every objection or requisition not so delivered shall be considered as absolutely waived, notwithstanding any subsequent negotiation or litigation, and time shall in these respects be of the essence of the contract; and for the purpose of any objection or requisition, an abstract shall be deemed to be perfect if it supply the information suggesting the same, although otherwise defective; and if the purchaser shall insist on any objection or requisition which the vendors shall consider themselves unable or, on the ground of expense or for any other reason, shall decline to remove or comply with, the vendors shall (unless the purchaser shall, within seven days after notice that the vendors so decline, withdraw or waive such objection or requisition), notwithstanding any intermediate negotiation or litigation, and although they may have insisted that such objection or requisition is untenable, be at liberty, by notice in writing signed by their solicitor, to rescind the contract, and shall thereupon return to the purchaser his deposit, but without any interest, costs of investigating the title, or other compensation or payment whatever.

Commencement of abstract.

V. The abstract of title shall commence [with an indenture dated, &c., and being a conveyance in fee simple to William Smith[1]].

Dower.

VI. The purchaser shall assume that every former owner of any part of the property, whose wife or widow (if any) might be entitled to dower, and is not mentioned in the title,

[1] Here will follow any special conditions which the state of the title may render desirable.

was unmarried at the time when he died or ceased to be the owner of the estate conferring the right to dower.[1]

Registration.

VII. As respects any deed, will, or other document which may not have been registered or properly registered in the county register, the same shall (if required and practicable) be registered or re-registered at the expense of the purchaser, who shall not make any other objection or requisition in respect thereof, nor shall the completion of the purchase be delayed with a view to such registration or re-registration.[2]

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[1] This is a special condition, which may not in all cases be necessary.

The following clause is sometimes useful:—

Freeholds formerly leasehold.

VIA. THE title shall commence, as to lots 1 and 2, with two several indentures, both dated the 12th of June, 1861, being conveyances in fee simple of those lots respectively to S. O., subject to two leases dated respectively the 19th of September, 1842, and the 20th of September, 1842. Such leases were assigned to the said S. O. by two indentures dated respectively the 30th day of May, 1846, and the 17th of May, 1858, abstracts of which shall be furnished to the purchasers of the lots to which the same respectively relate, but such purchasers shall not inquire into, require the production of, or make any objection or requisition in respect of the prior title to such leases respectively, but shall assume that the said assignments vested in the said S. O. a good title for the residue of the terms comprised therein respectively, and in particular the purchaser of lot 2 shall make no objection or requisition in respect of the fact that the said indenture of the 30th of May, 1846, contains no surrender of a derivative term then vested in a mortgagee who was a party to the said indenture, and whose mortgage was paid off on the execution of the said indenture, but such term shall be deemed to have become, on the execution of said indenture, a satisfied term.

Surrender of underlease.

[2] This condition will, of course, only be used for property in Middlesex or Yorkshire.

The following provisions have rendered unnecessary several conditions which were formerly in common use:—

Sect. 3 (6) of the Conveyancing Act, 1881, is as follows:—"On a sale of any property, the expenses of the production and inspection

Form 66.

of all Acts of Parliament, inclosure awards, records, proceedings of courts, court rolls, deeds, wills, probates, letters of administration, and other documents not in the vendor's possession, and the expenses of all journeys incidental to such production or inspection, and the expenses of searching for, procuring, making, verifying and producing all certificates, declarations, evidences, and information, not in the vendor's possession, and all attested, stamped, office or other copies or abstracts of, or extracts from, any Acts of Parliament or other documents aforesaid, not in the vendor's possession, if any such production, inspection, journey, search, procuring, making, or verifying is required by a purchaser, either for verification of the abstract, or for any other purpose, shall be borne by the purchaser who requires the same; and where the vendor retains possession of any document, the expenses of making any copy thereof, attested or unattested, which a purchaser requires to be delivered to him, shall be borne by that purchaser."

Sect. 3 (3) of the Conveyancing Act, 1881, provides that "a purchaser of any property shall not require the production or any abstract or copy of any deed, will, or other document, dated or made before the time prescribed by law or stipulated, for commencement of the title, even though the same creates a power subsequently exercised by an instrument abstracted in the abstract furnished to the purchaser; nor shall he require any information or make any requisition or objection or inquiry with respect to any such deed, will, or document, or the title, prior to that time, notwithstanding that any such deed, will, or other document, or that prior title is recited, covenanted to be produced, or noticed; and he shall assume, unless the contrary appears, that the recitals contained in the abstracted instruments of any deed, will, or other document forming part of that prior title are correct, and give all the material contents of the deed, will, or other document so recited, and that every document so recited was duly executed by all necessary parties, and perfected, if and as required, by fine, recovery, acknowledgment, inrolment, or otherwise."

Sect. 2 (2) of the Vendor and Purchaser Act, 1874, provides that "recitals, statements, and descriptions of facts, matters, and parties contained in deeds, instruments, Acts of Parliament, or statutory declarations, twenty years old at the date of the contract, shall, unless and except so far as they shall be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters, and descriptions."

Sect. 2 (3) of the Vendor and Purchaser Act, 1874, provides that "the inability of the vendor to furnish the purchaser with a legal covenant to produce and furnish copies of documents of title shall not be an objection to title in case the purchaser will, on the completion of the contract, have an equitable right to the production of such documents." And see § 9 of the Conveyancing Act, 1881.

Form 66.

VIII. Should there be any unstamped or insufficiently stamped muniments of title dated prior to 16th May, 1888[1] (which, however, is not known or believed to be the case), the expense of stamping or re-stamping the same, if required, by any purchaser shall, with all consequential expenses, be borne by him, and he shall make no objection or requisition in respect thereof. Stamps.

IX. The property is believed and shall be taken to be correctly described as to quantity and otherwise, and is sold subject to all chief and other rents, rights of way and water, and other easements (if any) charged or subsisting thereon, and if any error, misstatement, or omission in the particulars be discovered, the same shall not annul the sale, nor shall any compensation be allowed by the vendors or purchaser in respect thereof.[2] Description and easements.

X. The purchaser shall admit the identity of the property with that comprised in the muniments offered by the vendors as the title to such property upon the evidence afforded by a comparison of the descriptions in the particulars and the muniments. And the vendors shall not be required to account for the discrepancy (if any such exists) between present and former measurements, plans, names, or numbers.[3] Identity.

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[1] See Customs and Inland Revenue Act, 1888 (51 Vict. c. 8), § 20.

[2] Where a right of way appearing in earlier deeds has been closed, some such clause as the following, modified to suit the circumstances, should be inserted:—

IX. The part of lot 2 called "C. Alley" was formerly called by that name, and was subject to a public right of way, said to have been closed long since by the Commissioners of the Clink Pavement. It was also subject to a private right of way, but this is believed to have ceased. The use only of the alley was granted by the said lease of [*date*], but the site was conveyed by the said indenture of [*date*], and it shall be assumed that the fee simple of the said alley passed by the said conveyance, and the same is sold and shall be conveyed subject to all existing rights of way, whether public or private, over the same if any there be. Extinction of right of way.

[3] When streets have been re-numbered, one of the following clauses may be used:—

Xa. The property was formerly known as No. 5, A. Road, Change of name.

Form 66.

Fittings.

XI. The purchaser shall, within twenty-four hours after the sale, give notice in writing at the office aforesaid, whether he elects to take any (and if so, what part) of the fittings mentioned in the particular or not; and if he elects to take the same or any portion thereof, he shall pay for the same as hereinafter provided, and shall assume that the vendors have power to sell the same, and to give an effectual receipt for the purchase-money thereof.[1]

Valuation of fittings.

XII. The valuation referred to in the particular is to be made in the following manner (that is to say): each party (vendors and purchaser, or their respective solicitors) is, within forty-eight hours after the sale, to appoint by writing one valuer, and give notice in writing to the other party of such appointment, and the valuers so appointed are to make such valuation; but before they commence their valuation they are to appoint an umpire by writing, and the decision of such valuers, if they agree, and of such umpire, if they disagree, is to be final; and in case the purchaser shall neglect or refuse to appoint a valuer, and give notice thereof in the manner and within the time hereby specified, the valuation is to be made by the valuer appointed by the vendors alone, and his valuation is to be final.[2]

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and is now known as No. 115, O. Road, and the purchaser shall be satisfied with such evidence of the change of name as the vendors may be able to adduce.

Change of name.

Xb. Lots 1 and 2 were formerly known as Nos. 6 and 7, Clifton Terrace, Upper Richmond Road, and the purchasers thereof respectively shall be satisfied with such evidence of the change of name to Nos. 216 and 218, Upper Richmond Road, respectively, as the vendors may be able to adduce.

Compare Form 67, § 8.

[1] In selling a house, it is always desirable to state, either in the particular or the conditions, whether any (and if so what) fittings or fixtures are included in the sale, or whether the purchaser may elect (as here) or is bound to take them at a valuation.

[2] Where the particular gives the purchaser the option of taking certain fittings not fixed to the freehold, Conditions XI. and XII. must be used. Where it compels him to do so, Condition XII. only will be necessary. Where no fittings are included in the sale, both these

Form 66.

XIII. The purchaser shall pay the remainder of the purchase-money [and the value of the said fixtures, in case he shall elect to buy them,] on the [12th of August next], at the office aforesaid, to the vendors, or as they shall direct; and upon such payment the vendors will execute, or procure to be executed, by all necessary parties, a proper assurance to the purchaser of the property purchased by him, but such assurance, and every other assurance and act (if any) which shall be required by the purchaser for

Completion.

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conditions may be omitted. The following condition may be used instead of Conditions XI. and XII. :—

XIIa. In addition to the amount of the purchase-money, the purchaser shall pay for the tenant's fixtures and planned furniture (except carpets) in and about the premises, at a valuation to be made in manner following (that is to say): the vendors shall, within seven days from the date of the sale, appoint and give to the purchaser notice in writing of their appointment of a valuer, and the purchaser shall within the same seven days give to the vendors a like notice of his appointment of a valuer. The valuers thus appointed shall, before they proceed to act, appoint by writing an umpire, and the two valuers (or, if they disagree, their umpire) shall make the valuation, with power, in case of dispute, to decide as between the vendors and purchaser, what are tenant's fixtures and planned furniture. If either party shall neglect to appoint a valuer, or to give notice thereof to the other party within the time aforesaid, the valuer appointed by the other party shall make a final valuation alone; if from any cause no valuation shall be made under the provisions aforesaid, the tenant's fixtures and planned furniture as aforesaid shall be paid for by the purchaser at their fair value. The vendors or their nominee shall be at liberty to sell the furniture and effects, not taken by the purchaser under this condition, by auction upon the premises prior to the completion of the purchase.

Fixtures and furniture.

Or the following may be used :—

XIIb. All fixtures and fittings now upon the property, and belonging to the vendors, will be included in the sale without extra payment.

Form 66.

getting in, surrendering, or releasing any outstanding estate, right, title, or interest, or for completing or perfecting the vendors' title, or for any other purpose, shall be prepared, made, and done, by and at the expense of the purchaser, and every such assurance shall be left not less than ten clear days before the said [12th of August next], at the office aforesaid, and the expenses of the perusal on behalf of, and execution and acknowledgment by all parties (if any) other than the vendors of all such assurances shall be borne by the purchaser.

Possession and outgoings.

XIV. Possession will be retained and the outgoings discharged by the vendors up to the said [12th of August next]; and as from that day the outgoings shall be discharged and the possession taken by the purchaser, and such outgoings shall (if necessary) be apportioned between the vendors and purchaser for the purpose of this condition.

Interest.

XV. If from any cause whatever (other than the wilful default of the vendors) the purchase shall not be completed on the said [12th of August next], the purchaser shall pay interest on the remainder of the purchase-money at the rate of 5*l.* per cent. per annum from that day until the purchase shall be completed.

Deeds.

XVI. Such of the deeds and muniments of title in the possession of the vendors as relate exclusively to the property will, upon completion of the sale, be delivered to the purchaser; as respects such deeds and muniments as do not relate exclusively to the property, the vendors will retain the same, and will at the purchaser's expense give the usual acknowledgment and undertaking.[1]

Default.

Lastly. If the purchaser shall fail to comply with the above conditions, his deposit shall be forfeited, and the vendors shall be at liberty to re-sell the property at such time, in such manner, and subject to such conditions as they may think fit, and any deficiency in price which may happen upon, and all expenses attending the re-sale, shall immediately afterwards be paid by the purchaser to the vendors, and in case of non-payment shall be recoverable by them as liquidated damages.

[1] If the deeds do not relate to any other property, this condition will be omitted.

CONTRACT. Form 66.

IT IS HEREBY AGREED AND DECLARED that —— of —— has this day purchased by public auction of the vendors [*insert names of vendors*][1] the property described in the within particular for the sum of ——*l.*, under and subject to the conditions of sale within specified, and has paid down the sum of ——*l.* as a deposit and in part payment of the said purchase-money; and that the said purchase shall be completed and the remainder of the purchase-money paid according to the terms of the said particular and conditions.[2]

AS WITNESS the hands of the respective parties this —— day of ——, 1897.

Purchase-money	£	„	„
Deposit paid	£	„	„
Balance	£	„	„

Purchaser.
Vendor's Agent.

CONDITIONS OF SALE OF A LEASEHOLD HOUSE (WITH POSSESSION) IN ONE LOT. Form 67.

I. . . . . Bidding.
II. } *These will be the same as in Form* 63, *p.* 300. Deposit.
III. } Abstract.
IV. } Requisitions.

V. THE abstract shall commence with the lease under which the property is held (the same being an underlease) dated the 27th of March, 1841, the lessor being Mr. William Woods.[3] Commencement of abstract.

[1] It is *always* advisable to insert the *names* of the vendors, unless they are named in the conditions. See p. 28, *ante*.

[2] Where property put up for sale is in mortgage, and is not sold by the mortgagee under his power of sale, it is necessary, in some part of the particulars or conditions of sale, to give notice to the purchaser of the property being in mortgage; otherwise he could require the vendor either to get in the mortgage by a separate deed, or to pay any costs occasioned by the extra length of his conveyance consequent upon the necessity of the recital of the mortgage in the conveyance, and of making the mortgagees parties to it.

[3] Formerly this condition would have been extended so as to negative the purchaser's right to production of the lessor's title. But now see § 2 (1) of the Vendor and Purchaser Act, 1874, and § 3 (1) of the Conveyancing Act, 1881.

Form 67.

Production of lease.

VI. Inasmuch as the original or a copy of the said lease will be produced, and may be seen at any time prior to the day of sale at the office aforesaid, the purchaser shall be deemed to have full notice of the contents thereof.[1]

Mesne assignment.

[VII. The property was assigned by the original under-

[1] The usual provision as to the production of the last receipt for rent being evidence that no breach of covenant had been committed, is omitted in reliance upon § 3 (5) of the Conveyancing Act, 1881.

Instead of Conditions V. and VI., one of the following clauses may be used:—

Leaseholds. Underlease. Covenants.

VIa. The abstract of title shall commence with the lease under which the property is held (the same being an underlease), dated the 20th of March, 1866, the lessor being A. B. In order that the purchaser may satisfy himself as to the covenants and conditions contained in the original lease (dated the 1st of August, 1821), the original, or a copy of the same, will be produced, and may be seen at any time prior to the day of sale at the office aforesaid, and the purchaser shall be deemed to have full notice of the contents thereof.[2] Notwithstanding such production the purchaser shall not be entitled to call for, or investigate, or make any objection or requisition in respect of any title prior to the said underlease of the 20th of March, 1866.

Mesne assignments of leaseholds to be presumed.

VIb. The purchaser shall be furnished with an abstract of the lease dated the first of January, 1837, under which the property is held, and of an assignment of such lease dated the 7th of July, 1854, and the subsequent title, and shall not question the validity of the lease, or make any objection or requisition in respect of the intermediate title to the premises between the granting of the lease and the execution of the said assignment, notwithstanding any recital of or reference to such intermediate title contained in the assignment or any subsequent document of title, but shall assume that the said assignment vested in the assignee a good title at law and in equity for the residue of the term. The original lease (which comprised other property) is not in the possession of the vendors, and they shall not be required to obtain the production thereof.

[2] Compare Form 68, § 6, and Form 69, § 8, pp. 334, 338, *post*.

lessee to Mr. W. S. H., in 1842, by a deed-poll which contains the usual covenants for title on the part of the assignor. No requisition or objection shall be made in respect of such assignment not having been made by indenture.]

Change of numbers.

[VIII. The property was formerly known as No. 4, A. Terrace, and was changed to No. 5 to 1841 or 1842. The statement of this fact in the last-mentioned deed shall be accepted as conclusive evidence thereof. The property is now known as No. 7, and the purchaser shall be satisfied with such evidence of the change from No. 5 to No. 7 as the vendors may be able to adduce.][1]

Identity.

IX. The purchaser shall admit the identity of the property with that comprised in the muniments offered by the vendors as the title thereto upon the evidence afforded by a comparison of the descriptions in the particular and the muniments, and of a declaration to be made (if required) at the purchaser's expense that the property has been enjoyed according to the title from the date of the stipulated commencement. And the vendors shall not be required to account for the discrepancy (if any such exists) between present measurements and those given in the abstracted muniments of title.

Description, &c.

X. The property is believed to be and shall be taken to be correctly described [*&c., as in* § 11, *in Form* 63, *p.* 302].

Completion.

XI. The purchaser shall pay the remainder of his purchase-money on the 1st of August next, at the office aforesaid [*&c., as in* § 13, *Form* 66, *p.* 329].

Assignment by mortgagee.

XII. The sale being made under powers of sale contained in a mortgage, the purchaser shall not require the concurrence of any person interested in the equity of redemption. The vendor will convey "as mortgagee," and will not otherwise enter into any covenant.

Possession.

XIII. The possession will be retained and the outgoings discharged [*&c., as in* § 14, *Form* 66, *p.* 330, *ante*].

Interest.

XIV. If from any cause whatever (other than the wilful default of the vendors) [*&c., as in* § 15, *Form* 66, *p.* 330, *ante.*]

Deeds.

XV. The vendor will give to the purchaser an acknowledgment of his right to production and an undertaking for

[1] Compare Form 66, §§ Xa. and Xb., p. 327, *ante*.

Form 67.

safe custody of such of the muniments of title as he retains, but will not enter into any covenant in relation thereto.

Default.

LASTLY. IF the purchaser shall fail to comply with the above conditions [*&c., as in the last Condition in Form* 66, *p.* 330].

[The contract may be in the same form as in the previous form.]

Form 68.

SHORT FORM OF CONDITIONS OF SALE OF LEASEHOLD PROPERTY IN TWO LOTS.

Bidding.
Deposit.
Abstract.

I.
II.
III.

These conditions may be taken from Form 63 *or* 64, *pp.* 300 *and* 310, *ante.*

Requisitions.

IV. THE purchaser of each lot shall, within ten days after the delivery of the abstract of title, deliver to the vendor or his solicitor a statement in writing of his objections or requisitions (if any), and every objection not so delivered shall be deemed waived, and, subject to the objections so delivered, the title shall be deemed absolutely accepted. And if any purchaser shall insist on any objection or requisition which the vendor shall be unable or unwilling to remove or comply with, unless such requisition shall be withdrawn within seven days after the vendor shall have given notice of such inability or unwillingness, the vendor may, by notice in writing to be given to such purchaser or his solicitor, at any time, notwithstanding any negotiation in respect of any objection or requisition, annul the sale, and the auctioneer shall thereupon return to such purchaser his deposit, but without any interest, costs, or compensation whatever.

Commencement of abstract.

V. THE title to lot 1 shall commence with an indenture of lease dated, &c., and that to lot 2 with an indenture of lease dated, &c., and it shall not be a ground of objection that the property comprised in lot 1 is held by the vendor under a derivative lease.

Production of leases.

VI. THE leases of the property and the underleases thereof respectively will be produced for inspection on the day of sale, and the purchaser or purchasers shall not afterwards refuse to perform his, her, or their contract or contracts, on the ground of any covenants, stipulations, restrictions, conditions, matters, or things therein respectively contained, or

of any variation or discrepancy between the terms of the leases and underleases respectively.[1]

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[1] Conditions as to identity and description (see p. 302, *ante*) can be inserted after Condition VI. if there is any difficulty as to identification. Such conditions are often unnecessary in the case of leaseholds.

Some of the following special conditions may be used with such modifications as the circumstances may require:—

Production of leases and underleases.

VIA. INASMUCH as the originals, copies, or counterparts of all the leases and underleases referred to in conditions —— (except the said lease of the 1st of January, 1837), and also of the sub-leases and tenants' agreements referred to in the particular, will be produced, and may be seen at any time prior to the day of sale at the office aforesaid, the several purchasers shall be deemed to have full notice of their respective contents and effects, and of the variance (should any such there be) between the terms of such leases and sub-leases or agreements.

Proof of age of *cestui que vie*.

VIB. THE lease of the 12th of February, 1877, is determinable on the death of the lessor or of a lady now aged eighty-two, and the whole of the property will, after the death of such lady, be held under the lease of the 22nd of March, 1877. The statement of the age of such lady in the first-mentioned lease shall be conclusive evidence of her age.

Surrender of lease.

VIC. THE purchaser shall not be entitled to require the vendors to procure the surrender of a lease for twenty-one years from October, 1878, of certain part of the property, but shall be satisfied with the production of the original lease [and an agreement (which was confirmed by the Chancery Division) for the surrender of such lease].

Lease comprising other property.

VID. THE property now offered for sale is subject, along with other tenements, to the rent and covenants reserved by and contained in the original lease of the premises, and such other tenements, dated, &c., granted by A. B. to C. D. and others, but the purchaser shall not require any evidence of the discharge of the premises hereby offered for sale from the said rent and covenants, or as to any apportionment thereof, nor make any requisition or objection as to the same not being sufficiently secured by the other part of the property charged therewith, nor require any indemnity in respect of

Form 68.

such rent and covenants, nor be entitled to any evidence as to whether the covenants comprised in such original lease have been observed and performed.

Underlease operating as assignment.

VIe. By an indenture dated, &c. (and which was probably intended to take effect as an underlease), A. B., in whom the entire property comprised in the original lease was then vested, demised part of the property to W. X. at the rent of 30*l.* per annum, and for a term which (as is supposed) was intended to terminate ten days prior to the determination of the original lease, but which in fact will not terminate by effluxion of time until nearly three months after that date. It is considered that such indenture operated as an assignment of the said property for the residue of the said term granted by the original lease at a rent of 30*l.* per annum secured by the covenant of the said W. X., but without any reversion being left in the said A. B. The purchaser shall be entitled to an assignment of such rent, with the benefit of such remedies for the recovery of the same as the vendors are able to confer, and shall not make any objection or requisition in respect of any of the matters referred to in this condition.

Licence to assign.

VIf. The lease contains restrictions against alienation without the licence of the wardens and keepers of London Bridge and the clerk comptroller of the works and revenues of the same bridge, and also requires that all deeds of alienation shall be prepared by the comptroller. Some of the original lessees have released or assigned their interests in the property to their co-lessees, and certain tenancy agreements relating to the property have from time to time been executed. No licences in respect of such instruments have, in fact, been obtained. The purchaser shall not make any objection or requisition on account of such licences not having been obtained, nor in consequence of any instruments relating to the property not appearing to have been, or not having in fact been, prepared by the comptroller. It is believed that a licence will not be refused in the case of a sale to a purchaser of known respectability. Should it, however, be refused in the case of the purchaser at the present sale, the vendors shall be at liberty to rescind the sale upon payment to the purchaser of his deposit, but without interest, costs, or compensation of any kind.

Form 68.

VII. Upon payment of the remainder of the purchase-money at the office aforesaid, on [*date*], on which date the purchase is to be completed, the vendor will execute a proper assurance to the purchaser, such assurance to be left at the offices aforesaid for execution by the vendor ten days at least before [*date*].[1] Completion.

VIII. In case both lots shall be sold, the purchaser of the larger lot in value shall be entitled to the custody and possession of such of the title deeds as have reference to both of the said lots, and shall give to the purchaser of the other lot an acknowledgment of his right to production and an undertaking for the safe custody thereof; and in case either lot shall remain unsold, the vendor will give to the purchaser such acknowledgment and undertaking, but will not enter into any covenant in relation thereto. Deeds.

Lastly. If any purchaser shall fail to comply [*&c., as in the last condition in Form* 63, *p.* 304].

[The purchase-contract may be taken from Form 66, p. 331.]

Form 69.

Conditions of Sale of Leaseholds in Lots under a Judgment of the Chancery Division of the High Court of Justice.

I. No person is to advance less than 5*l.* at each bidding. Bidding.

II. The sale is subject to a reserve bidding for each lot which has been fixed by the judge to whose branch of the Court this cause is assigned. Reserve.

III. Each purchaser is at the time of the sale to subscribe his name and address to his bidding (in the bidding paper) and the abstract of title, and all written notices and communications and summonses are to be deemed duly delivered to and served upon the purchaser by being left for him at such address unless or until he is represented by a solicitor. Signature by purchasers.

IV. Each purchaser is, at the time of sale, to pay a deposit of 10*l.* per cent. on the amount of his purchase-money to Mr. A. B., the person appointed by the said judge to receive the same. Deposit.

[1] Conditions as to receipt of rents and payment of interest may be inserted here if desired. See the previous Forms.

Form 69.

Certificate.

V. The master will, after the sale, proceed to certify the result, and Monday [*date*], at twelve o'clock at noon, is appointed as the time at which the purchasers may, if they think fit, attend by their solicitors at the chambers of the judge, at the Royal Courts of Justice, to settle such certificate. The certificate will then be settled, and will, in due course, be signed and filed and become binding without further notice or expense to the purchasers.

Abstract.

VI. The vendors (the plaintiffs in the cause) are, within ten days after such certificate has become binding, to deliver to each purchaser or his solicitor an abstract of the title to the property purchased by him subject to the stipulations contained in these conditions.

Requisitions.

VII. Each purchaser is, within fourteen days after the actual delivery of the abstract, whether the same be delivered within the above-mentioned ten days or not, to deliver at the office [*&c., as in Condition* 4, *in Form* 64, *p.* 311 *down to* "although otherwise defective"]. And if any purchaser shall insist on any objection or requisition which the vendors shall consider themselves unable or, on the ground of expense or for any other reason which the judge shall consider sufficient, shall decline to remove or comply with, the vendors, with the sanction of the said judge, shall, notwithstanding any intermediate negotiation, be at liberty, by notice in writing signed by their solicitor, to rescind the contract upon such terms, in all respects, as the judge shall be pleased to direct.

Commencement of abstract.

VIII. The abstracts of title shall commence with the leases under which the premises respectively are held (the same being underleases), dated respectively the 18th, 19th, 20th, and 21st days of, &c., and the lessor being in each case Mrs. M. A. And inasmuch as the originals or copies of all the leases above referred to will be produced and may be seen at any time prior to the day of sale at the office aforesaid, the purchaser shall be deemed to have full notice of their respective contents. And no objection or requisition shall be made in respect to the fact (should it be one) of such superior leases or any of them having comprised other property under a joint liability to rent and covenants.

Chancery proceedings.

IX. All facts or matters admitted, proved, or proceeded on in the above-mentioned action, *M.* v. *B.*, or certified by the

chief clerk or master of the judge to whose Court that cause is assigned, shall be deemed thereby conclusively evidenced. **Form 69.**

X. As respects any deed, will, or other document which may not have been registered [*&c., as in Condition* 7, *in Form* 66, *p.* 325]. Registration.

XI. Should there be any [*&c., as in Condition* 8, *of Form* 66, *p.* 327]. Stamps.

XII. Every purchaser shall admit the identity of the property purchased by him with that comprised in the muniments offered by the vendors as the title to such property upon the evidence afforded by a comparison of the descriptions in the particulars and muniments, and of a declaration to be made (if required) at the purchaser's expense that the purchased property has been enjoyed according to the title abstracted since the date of the lease above referred to under which the same is held. Identity.

XIII. Every lot is believed and shall be taken to be correctly described as to quantity [*&c., as in Condition* 9, *in Form* 66, *p.* 327].[1] Description.

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[1] If there are any special or unusual easements or restrictions, attention should be called to them. The following clauses have been used by the Editor in various cases for this purpose:—

XIIIa. The company has recently opened certain windows through a wall on the north-west side of the property (which wall belongs to the owners of the adjoining property), and has also passed certain bolts and supports for a boring machine through the same wall. The conveyance to the company contains a reservation of a rent of 20*s.* per annum in respect of these matters, and a reservation of a right for the adjoining owners to interfere with the access of light to such windows, and also certain covenants relating to the user of the said wall by the company. The purchaser shall not be entitled to make any objections or requisitions in respect of these matters, and inasmuch as the originals or copies of the conveyance above referred to [and of the above-mentioned lease of [*date*], and of the lease by which the ground rents referred to in the particulars are reserved] will be produced and may be seen at any time prior to the day of sale at the office aforesaid, the purchaser shall be deemed to have full notice of their respective contents. Easements.

Form 69.

Tenancies.

XIV. As respects those lots which are not in hand, the purchasers shall be satisfied with such evidence of the terms of the tenancies as the vendors may be able to adduce. And the expense of stamping or re-stamping any unstamped or insufficiently stamped tenants' agreements or duplicates thereof, dated prior to the 16th of May, 1888, shall be borne by the purchaser requiring the same. And the purchasers shall also be deemed to buy with full notice of the tenants' rights (if any) to fixtures and of the state of the different lots as respects repairs, insurance (if any), and all other matters.

Parties to conveyance.

XV. No purchaser shall require for any purpose the concurrence of any person in respect of any equitable or benefi-

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Restrictions as to rights of light.

XIIIB. THE purchaser of the property (if the same shall be sold in one lot, or of lot 3 if the property shall not be sold in one lot) shall not be entitled to open any windows on the north side of the plot of land coloured purple on the Plan No. 2 overlooking, nor to any rights of light or air over, the adjoining property of the vendors abutting upon the north side of the said plot of land, and such purchaser shall enter into covenants framed so as to bind his representatives and assigns with the vendors as owners of such adjoining property for securing the observance of the stipulations contained in this condition.

Sale subject to specified easements.

XIIIC. THE property is sold subject to all rights of way, lights, and other easements, if any, affecting the same, and in particular those portions of the property coloured blue on the plan are sold and will be conveyed subject to all public rights of way or otherwise [and that portion of the property occupied as a saddler's shop is sold subject to the tenancy mentioned in the particular, and to any rights of the tenants to fixtures or otherwise]. If there are on the property now sold any windows overlooking or receiving light over the property of the vendors on the north side thereof, the present sale shall not be construed to give any purchaser, as against the vendors, any rights of light or air in respect of such windows, and the conveyance to the purchaser of such property shall contain any reservations or provisions necessary to carry this stipulation into effect.

cial interest bound by the order of sale, nor require the production of any abstract or copy of any documents relating solely or so far as the same only relate to any interests so bound, whether any such documents are or are not stated in the pleadings in the said action. The vendors will convey "as trustees," but will not otherwise enter into any covenant.

Deeds.

XVI. Such of the muniments of title in the possession of the vendors as relate exclusively to any of the lots, and have not already been covenanted to be produced, will, upon completion of the sale of the lot or lots to which the same relate, be delivered to the purchaser of the lot, or, as the case may be, the largest purchaser in value of the lots to which the same relate; but every purchaser to whom any muniments relating to other lots or another lot shall be so delivered shall, if required in that behalf, give to the purchasers or purchaser of such other lots or lot the usual acknowledgment and undertaking, and no purchase shall be delayed with a view to giving or procuring such acknowledgment or undertaking. In the meantime the vendors will retain such muniments and will produce the same, and also such muniments as do not relate exclusively to the said lots or any of them, or which have already been covenanted to be produced to any other person by the vendors or any person through whom they claim, to and at the expense of the several purchasers, but will not enter into any covenant or give any acknowledgment or undertaking in relation thereto. The vendors, however, reserve the right of making, with the approval of the judge, any substituted or other arrangement in respect of the muniments of title or any of them.[1]

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[1] Compare the following conditions as to deeds, and see Form 67, § 15, p. 333, *ante*.

Deeds.

XVIa. Such of the muniments of title in the vendors' possession as consist of probates, settlements, and appointments of trustees, and such (if any) others as relate to other property, will be retained by the vendors, who will, at the expense of the purchaser requiring the same, give (except as to probates) an acknowledgment of right to production, and (except in the case of trustees) an undertaking for safe

Form 69.

Completion.

XVII. Each purchaser is, under an order to be obtained by him, or in case of his neglect by the vendor, at the cost of the purchaser, upon application at the chambers of the said judge, to pay the amount of his purchase-money, after deducting the amount paid as a deposit into Court to the credit of the cause, *M.* v. *B.*, 1879, M. 3, proceeds of leasehold property, Nos. 5, 6, 7, and 8, D. V., on or before [*date*], and if the same is not so paid then the purchaser is to pay interest on his purchase-money at the rate of 5*l.* per cent. per annum, from the said [*date*], to the day on which the same is actually paid, deducting property tax. Upon payment of purchase-money in manner aforesaid the purchaser is to be entitled to obtain possession or to the rents and profits as from the said [*date*], down to which time all outgoings are to be paid by the vendors, and if necessary such rent and outgoings shall be apportioned between the vendors and purchasers.

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custody. Such other deeds and muniments in the possession of the vendors as relate exclusively to any of the lots will, upon completion of the sale of the lot or lots to which the same relate, be delivered to the purchaser of the lot, or, as the case may be, the largest purchaser in value of the lots to which the same relate; but every purchaser to whom any deeds or muniments relating to other lots or another lot shall be so delivered shall, if required in that behalf, give to the purchaser or purchasers of such other lot or lots an acknowledgment of the right of such purchaser or purchasers to production and delivery of copies of all or every of the same muniments, and also an undertaking for the safe custody thereof, to be prepared by and at the expense of the person requiring the same, who shall also pay the expenses attending its perusal and execution by and on behalf of the person giving the same, and all other necessary parties, if any, and no purchase shall be delayed with a view to giving or procuring any such acknowledgment or undertaking. In the meantime the vendors will retain such deeds and muniments, and will produce the same to and at the expense of the several purchasers, but will not enter into any covenant, or give any acknowledgment or undertaking in relation thereto.

Form 69.

Default.

Lastly. If any purchaser shall not pay his purchase-money at the time above specified, or at any other time which may be fixed in any order for that purpose, and in all other respects perform these conditions, an order may be made by the judge, upon application at chambers, for the re-sale of the lot purchased by such purchaser, and for payment by the purchaser of the deficiency (if any) in the price which may be obtained from such re-sale, and of all costs and expenses occasioned by such default.

Form 70.

Particulars and Conditions of Sale of Reversionary Life Estate in two Sums of Stock and a House by Trustee in Bankruptcy.

Particulars.

Lot 1. The equitable life estate of a gentleman now aged forty-nine, in one moiety of the income of a sum of 11,000*l.* (now invested in and consisting of 12,482*l.* 5*s.* 6*d.* New Consols), in reversion expectant on the death of a lady now aged sixty-nine years; and also in the other moiety thereof in reversion expectant on the death of the same lady and a lady now aged forty-seven years.

Lot 2. The equitable life estate of the same gentleman in a messuage or dwelling-house, garden and hereditaments, situate at C., in the County of Somerset; and also in a sum of 1,000*l.* New Consols, both expectant on the death of a married lady, of unsound mind, now aged forty-nine years.

Conditions of Sale.

Bidding. Deposit.

I. } [*Same as in Form* 63, *p.* 300, *ante.*]
II. }

Abstract.

III. The vendor (the trustee in bankruptcy of the person entitled to the property) is to deliver to each purchaser or his solicitor an abstract of the title to the property purchased by him, subject to the stipulations contained in these conditions.

Requisitions.

IV. [*Same as IV. in Form* 63, *p.* 300, *ante.*]

Commencement of abstract.

V. The abstract shall commence, as to lot 1, with the will of A. B., dated, &c., and inasmuch as a copy of such will will be produced at the sale, and may be inspected for seven

Form 70.

days prior to the sale at the office aforesaid, the purchaser shall accept the same as a good root of title, and as containing a valid and effectual bequest of the life interest comprised in lot 1, according to the description thereof contained in the particular of sale, and shall not require any further or other title thereto, or make any objection or requisition whatsoever in respect of the said will.[1]

Commencement of abstract, lot 2.

VI. The abstract shall commence, as to lot 2, with an indenture of settlement, dated the 31st of July, 1852, and made previous to the marriage of C. D. with E. D., by which the said messuage and the said sum of 1,000*l.* New Consols were settled in trust after the death of the said E. D., for the said C. D. for life. The said indenture shall be accepted as conclusive evidence of all facts, matters, and conclusions of law recited, stated, assumed, or implied therein.

Evidence of investment.

VII. The vendor will produce a letter, dated, &c., written by the solicitors of the present legal personal representatives of the testator, A. B., and the purchaser of lot 1 shall accept such letter as conclusive evidence that the said sum of 11,000*l.* is now invested, as stated in the particular, in the names of such legal personal representatives. The purchaser of lot 2 shall be satisfied with such evidence of the present state of investment of the said sum of 1,000*l.* New Consols as the vendor may be able to produce.

Evidence of ages, &c.

VIII. The vendor will produce certificates of baptism of the persons referred to in the particular, and a certificate of the marriage of the persons mentioned in Condition VI., and

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[1] Where the title is defective, the following conditions have been used. But they should not be used (except in the case of comparatively insignificant parts of a property) unless absolutely necessary, as they are certain to affect the price.

Title to be accepted.

Va. The purchaser of lot 1 shall take it with the title under which it is now held by the vendors. An abstract of this title will be produced, and may be seen at the office aforesaid at any time prior to the day of sale.

Rescission if title bad.

Vb. If the counsel for the purchaser shall, on the examination of the title, be of opinion that a good title to and conveyance of the property cannot be made, the contract shall thereupon be rescinded, and the purchaser shall be entitled to a return of his deposit, without interest or costs.

such certificates shall be deemed conclusive evidence of the ages of such persons respectively, and of the solemnization of such marriage.[1]

Covenants.

IX. No purchaser shall require any covenant for title other than the covenant implied by a conveyance "as trustee."

Completion.

X. Each purchaser shall pay the remainder of his purchase-money on the 2nd of April next at the office aforesaid [*&c., as in Form* 63, § 11, *p.* 302, *down to* "expenses of perusal," *and then proceed as follows*] on behalf of and execution by all parties (if any) other than the vendor and the bankrupt of all such assurances, shall be borne by the purchaser.

Interest.

XI. If from any cause whatever (other than the wilful default of the vendor) any purchase [*&c., as in Form* 63, § 11, *p.* 302].

Default.

Lastly. [*Same as in previous forms.*]

[1] Where there was a difficulty in proving heirship, the following condition was used:—

Intestacy and heirship.

VIIIa. The purchaser shall accept as sufficient evidence that A. B. (who in [*date*] sold and conveyed the premises to a purchaser in fee simple) was heir-at-law of C. B. (letters of administration to whose effects were granted in [*date*] to X. Y. and the said A. B.) a document in the vendor's possession, purporting to be an office copy of an affidavit of X. Y. (therein described as half brother of the said A. B.), sworn in the year 18—. The said affidavit and letters of administration shall be accepted as conclusive evidence that the said C. B. died intestate.

CONVEYANCES AND ASSIGNMENTS.[1]

Form 71. CONCISE CONVEYANCE OF A PLOT OF FREEHOLD LAND BY OWNER IN FEE SIMPLE.

Parties. 1. THIS INDENTURE, made [*date*], between A. B., of, &c., of the one part, and C. D., of, &c., of the other part:

Testatum. 2. WITNESSETH, that in consideration of 50*l.* to the said A. B. paid by the said C. D. (the receipt whereof is hereby acknowledged), the said A. B. as beneficial owner[2] hereby grants to the said C. D.

Parcels. 3. ALL that piece of land containing by admeasurement 100 square yards or thereabouts, situate at the corner of High Road and King's Lane, in the parish of X., in the county of Y., which said piece of land is delineated and coloured pink on the plan drawn hereon [Together with all rights, easements, and appurtenances thereto in fact or by reputation belonging, or now or heretofore enjoyed therewith].[3]

Habendum. 4. TO HOLD the premises unto [and to the use of][4] the said C. D. and his heirs.

[1] The Editor has divided the conveyances and assignments—like the other forms in this volume—into numbered paragraphs. This will be found a great convenience if the draftsman wishes to instruct a clerk to copy any portion of the draft. His instructions will simply be, "Copy paragraph 3 of Form 71," varying the numbers of the paragraphs and forms as may be necessary. But, except in the case of long, complicated deeds, containing special provisions, it is not usual for conveyances and assignments to be engrossed in numbered paragraphs or with marginal notes. If it is desired to dispense with them, the numbers and marginal notes may be struck out, when the draft is completed, before it is placed in the hands of the engrossing clerk.

[2] These words imply covenants for title. See § 7 of the Conveyancing Act, 1881.

[3] These words may be omitted, unless it is intended to revive some former easement over adjoining land which has become extinguished in consequence of the land conveyed and the adjoining land belonging to the same owner.

[4] In a conveyance of this kind, where a money consideration is

5. [And the said A. B. hereby acknowledges the right of the said C. D. to production and delivery of copies of the documents specified in the 2nd schedule hereto and hereby undertakes for the safe custody thereof].[1] In witness whereof the parties hereto have hereto set their hands and seals the day and year first above written. Form 71. Deeds.

The Schedule above referred to.

[*Insert list of deeds retained by vendor.*]

Conveyance in Fee Simple of Freehold Cottage with Right to use Pump. Form 72.

1. This Indenture, made [*date*], between A. B., of, &c., of the one part, and C. D., of, &c., of the other part. Parties.

2. Whereas[2] A. B. (hereinafter called "the vendor") is seised in fee simple free from incumbrances of the hereditaments hereby conveyed, and has agreed to sell the same to C. D. (hereinafter called "the purchaser"), for the sum of 250*l.* Title.

3. Now this Indenture witnesseth, that in consideration of 250*l.* now paid by the purchaser to the vendor (the receipt whereof is hereby acknowledged), the vendor as beneficial owner hereby conveys to the purchaser, Testatum.

4. All that piece of land with the messuage thereon situate and being No. 5, on the south side of X. Street, Y., in the county of Z., containing in width fronting the said street 18 feet and in the rear thereof 22 feet, and in depth on each side thereof 41 feet, which piece of land and messuage are delineated in the plan drawn in the margin hereof, and are therein coloured pink. Parcels.

actually paid, the words "and to the use of" are not strictly necessary, although usually inserted. If they are omitted, the conveyance will take effect as a common law grant, instead of under the Statute of Uses. Of course, if any trusts are declared, the words "to the use of" must be inserted in the habendum, to prevent the legal estate from vesting, under the Statute of Uses, in the *cestui que trust.*

[1] These words and the schedule will be omitted if all the deeds relating to the property are handed to the purchaser.

[2] This recital is inserted in order that the conveyance may be conclusive evidence of the vendor's seisin after twenty years have expired, under § 2 of the Vendor and Purchaser Act, 1874.

Form 72.

Easements.

5. TOGETHER with all easements and appurtenances heretofore enjoyed therewith [and in particular the right to use the well and pump on the piece of land adjoining the said hereditaments on the west side thereof, in common with such other persons as are entitled to the use thereof, subject to the payment of a fair proportion of the expense of keeping the said well and pump, and the machinery and tackle thereof, in repair].[1]

Habendum.

6. To HOLD the premises unto and to the use of the purchaser in fee simple.[2]

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[1] In settling this draft on behalf of the vendor, inquiry should be made whether any stipulations are to be inserted as to rights of light, way, drainage, &c. If so, such rights should be inserted between clauses 5 and 6, by way of reservation, as follows :—

EXCEPT and reserved unto the vendor, his heirs and assigns, the owner or owners for the time being of the adjoining messuage, No. 6, X. Street, aforesaid, the right to open not more than four windows overlooking the hereditaments hereby conveyed, and also at all times hereafter to use the sewers and drains under the hereditaments hereby conveyed, and also the free and uninterrupted right in common with the purchaser, his heirs and assigns at all times, for all purposes, with or without horses and vehicles, to pass and repass along the road shown on the said plan and thereon marked A. B.

For other stipulations as to lights, &c., see Form 69, p. 340, *ante*.

[2] Such a clause as the following is sometimes useful :—

PROVIDED always, &c., that the ashpits shown on the said plan, and now used in common by the tenants of the said dwelling-houses, Nos. 5 and 6, X. Street, aforesaid, shall at all times hereafter remain as at present constructed, and shall be jointly used and enjoyed by the owners for the time being of the same dwelling-houses and their respective tenants, and that no alteration shall be made in either of such ashpits by either of such owners aforesaid or his tenant, without the consent in writing of the other of such owners.

And a covenant to contribute to the repair of the pump, road, and ashpits may be inserted.

7. And the vendor hereby acknowledges the right of the purchaser to production of the documents of title mentioned in the schedule hereto and to delivery of copies thereof, and hereby undertakes for the safe custody thereof. Deeds. **Form 72.**

In witness, &c.

The Schedule above referred to.

[*Insert list of deeds retained by vendor.*]

Conveyance of Freeholds by Indorsement.[1]—*Very concise form.* **Form 73.**

This Indenture, made, &c., between the within-named A. B., of the one part, and C. D., of, &c., of the other part. Parties.

Witnesseth, that in consideration of 60*l.* now paid by the said C. D. to the said A. B. (hereby acknowledged), the said A. B. as beneficial owner hereby conveys to the said C. D. all and singular the premises comprised in and assured by the within-written indenture. To hold the same to and to the use of the said C. D. in fee simple. Conveyance.

In witness, &c.

Conveyance in Fee Simple of Part of a Farm, a Lessee joining to merge his Term. **Form 74.**

1. This Indenture, made between A. B., of, &c., of the first part, C. D., of, &c., of the second part, and E. F., of, &c., of the third part. Parties.

2. Whereas the said A. B. is seised in fee simple in possession of the hereditaments hereinafter described free from incumbrances, but subject to the lease hereinafter mentioned. Freehold title.

3. And whereas the said A. B. has agreed with the said E. F., for the sale to him of the hereditaments hereinafter Sale.

[1] Freeholds are seldom conveyed by indorsement, although leaseholds often are. In simple cases—*e.g.*, where a plot forming part of a building estate changes hands—especially where the same solicitor acts for both parties, and therefore has the conveyance to the vendor in his possession, this course may properly be adopted. One objection to this course is that the conveyance could not easily be made a root of title, as it could not be separated from the deed upon which it is indorsed.

Form 74.

described, and the inheritance thereof in fee simple in possession free from incumbrances, at the price of 3,500*l.*[1]

Leasehold title.

4. And whereas the said hereditaments are part of a farm of which the said C. D. is a tenant, under a lease dated, &c., for a term which will expire on the [*date*], and the said C. D., at the request of the said A. B., has agreed to concur herein for the purpose and in manner hereinafter appearing.

Testatum.

5. Now this Indenture witnesseth, that [in pursuance of the said agreement in this behalf and] in consideration of the sum of 3,500*l.* upon the execution hereof paid by the said E. F. to the said A. B., with the privity of the said C. D. (the receipt whereof the said A. B. hereby acknowledges), the said A. B., as beneficial owner, hereby conveys, and at his request the said C. D., for the purpose of merging the residue of the said term [in the hereditaments hereinafter described], hereby assigns and surrenders unto the said E. F. [his heirs and assigns].

Parcels.

6. All those fields containing by admeasurement 35 acres, or thereabouts, situate in the parish of X., in the county of Y., now forming part of a farm known as Z. Farm.

[All which said fields or closes of land are more particularly] described with their dimensions in the 1st schedule hereto and [are] delineated with the abuttals thereof in the map drawn in the margin hereof, and therein coloured pink, the numbers in the said schedule referring to corresponding numbers on the said map.

Right of way.

7. Together with full liberty for the said E. F., his heirs and assigns, and his and their agents and tenants, and the owners and occupiers for the time being of the hereditaments hereby assured, and the servants and workpeople of him and them respectively, from time to time and at all times, for all purposes, to go, return, pass and repass, with and without horses, carts, waggons, and other carriages, laden or unladen, and also to drive cattle and other beasts in, through, along, and over a certain road or way of four yards wide at the least, to be forthwith laid out, levelled, and formed by the said

[1] The following is a shorter form of recital:—

Sale.

3A. And whereas the said A. B. has agreed with the said C. D. for the sale to him of the fee simple of the hereditaments hereinafter described for 3,500*l.*

Form 74.

A. B., across the land of the said A. B., in the course and direction shown in the said map, and therein coloured brown.

Habendum.

8. To HOLD the premises hereby assured unto the said E. F. and his heirs, freed [and discharged] from the residue of the said term of years.

To the use of the said E. F., his heirs and assigns.

Covenant to make road.

9. AND the said A. B. hereby covenants with the said E. F. and his assigns that the said A. B. will, at his own cost, forthwith lay out, level, and form, and afterwards at all times maintain and keep in repair in a good, substantial and workmanlike manner, a road or way of four yards wide at the least for the whole length thereof over and across the land of the said A. B.. in the course and direction shown and delineated in the said map, and therein coloured brown.

Covenant against incumbrances by lessee.

10. AND the said C. D., so far as relates to his own acts and deeds, hereby covenants with the said E. F., his heirs and assigns, that he has not executed or done, or knowingly suffered, or been party or privy to any deed or thing whereby or by reason or means whereof the premises hereinbefore assured or any of them, or any part thereof, are, is, or may be impeached, charged, affected, or incumbered in title, estate, or otherwise howsoever, or whereby or by reason or means whereof he, the said C. D., is in anywise hindered from assuring the same premises, or any of them, or any part thereof, in manner aforesaid.

Deeds.

11. AND the said A. B., as to the documents specified in the first part of the 2nd schedule hereto, and the said C. D., as to those specified in the second part of the said schedule, hereby respectively acknowledge the right of the said E. F. to production and delivery of copies of the documents specified in the schedule hereto, and hereby undertake for the safe custody of the same documents respectively.

IN WITNESS, &c.

The 1st SCHEDULE above referred to.

[*Detailed description of land.* See p. 354.]

The 2nd SCHEDULE above referred to.

PART I.

[*Deeds in possession of A. B.*]

PART II.

[*Lease in possession of C. D.*]

Form 75. CONVEYANCE IN FEE SIMPLE OF A FARM BY TENANT FOR LIFE UNDER SETTLED LAND ACT, 1882.

Parties.

1. THIS INDENTURE made [*date*], between A. B., of, &c., of the first part, C. D., of, &c., and E. F., of, &c., of the second part, and G. H., of, &c., of the third part.

Limitations of settlement.

2. WHEREAS under an indenture dated, &c., and made between, &c. (being a settlement executed in contemplation of the marriage then intended, and shortly afterwards solemnized between the said A. B. and his present wife M. B.), the hereditaments hereinafter described stand limited to the use that the said M. B. shall, during the joint lives of herself and the said A. B., receive the annual sum of 100*l.*, with remainder to the use of the said C. D. and E. F. for the term of 100 years, upon trusts for securing the said annual sum, with remainder to the use of the said A. B. and his assigns during his life, without impeachment of waste, with remainders over.[1]

Trustees.

3. AND WHEREAS the said C. D. and E. F. are trustees of the said settlement with a present power of sale over the said hereditaments.[2]

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[1] The following shorter recital may be substituted:—

2A. WHEREAS under an indenture, dated, &c., and made, &c., [*or* under the last will dated, &c., of X., who died on (*date*)] the hereditaments hereby assured to uses under which the said A. B. is legal tenant for life thereof in possession [*or* is beneficially entitled to the income thereof for his life].

[2] The following recitals may be substituted, if the circumstances so require:—

3A. AND WHEREAS the said C. D. and E. F. are trustees of the said settlement [or will] with a future power of sale over the hereditaments hereby assured [*or* with a present power of sale over hereditaments subject to the same limitations [or trusts] as the hereditaments hereby assured].

3B. AND WHEREAS there being then no trustees of the said settlement [*or* of the settlement created by the said will] for the purpose of the Settled Land Act, 1882, the said C. D. and E. F. were by an order of the Chancery Division of the High Court of Justice, duly made by his Lordship Mr.

Form 75.

Sale.

4. And whereas the said A. B. has agreed with the said G. H. for the sale to him of the hereditaments hereinafter described, and the inheritance thereof in fee simple free from incumbrances at the price of ——*l.*

Testatum.

5. Now this Indenture witnesseth, that in consideration of ——*l.* now paid by the said G. H. to the said C. D. and E. F. by the direction of the said A. B. (the receipt and payment whereof the said C. D., E. F., and A. B. hereby respectively acknowledge), the said A. B. as beneficial owner, and in exercise of the power for this purpose given to him by the Settled Land Act, 1882, and of every other power (if any) in this behalf enabling him, hereby grants and conveys unto the said G. H.

Parcels.

6. All that messuage or farm-house with the outbuildings thereto belonging, and the several closes of land now occupied therewith, situate in the parish of X., in the county of Y., and known as Z. farm. All which hereditaments, with the respective dimensions thereof, are specified in the schedule hereto, and are delineated and coloured pink in the plan drawn in the margin hereof.

Habendum.

7. To hold the same unto and to the use of the said G. H., his heirs and assigns.

Restriction of implied covenants.

8. Provided always, that as regards the reversion expectant on the life estate of the said A. B., and the title to and further assurance of the said hereditaments after his death, the covenants for title herein implied shall extend only to the acts and defaults of the said A. B. and his own heirs, and persons claiming through or in trust for him or them.

Deeds.

9. And the said C. D. and E. F. hereby acknowledge the right of the said G. H. to production and delivery of copies of the documents specified in the 2nd schedule hereto.[1]

In witness, &c.

Justice ——, appointed trustees of the said settlement for the purposes of the Settled Land Act, 1882.

[1] If the legal estate is in the trustees, they will probably have all the deeds, and will give the acknowledgment. If the legal estate is in the tenant for life, he will probably have all the deeds except the settlement, which will be in the custody of the trustees. The acknowledgment and undertaking will, in the latter case, be as follows :—

9A. And the said A. B. as to the documents specified in

Form 75.

The 1st SCHEDULE above referred to

No.	Name of Field.	Cultivation.	A. R. P.

The 2nd SCHEDULE above referred to.

[*Deeds retained by Vendor.*]

Form 76. CONVEYANCE IN FEE SIMPLE BY APPOINTMENT AND GRANT.

Parties. 1. THIS INDENTURE, made, &c., between A. B. (*the vendor*), of, &c., of the one part, and C. D. (*the purchaser*), of, &c., of the other part.

Conveyance to dower uses. 2. WHEREAS by an indenture, dated, &c., and made between Y. Z., of the first part, A. B., of the second part, and W. X., of the third part, the hereditaments hereinafter described were assured unto A. B. and his heirs, to such uses as A. B. should appoint; and in default of appointments to the use of A. B. and his assigns for life, with remainder to the use of the said W. X. and his heirs, during the life of A. B., in trust for A. B. and his assigns, with remainder to the use of A. B. in fee simple.

Sale. 3. AND WHEREAS A. B. has agreed with C. D. for the sale to him of the said hereditaments, and the inheritance thereof in fee in possession, free from incumbrances, at the price of [500*l.*].

Testatum No. 1 (Appointment). 4. NOW THIS INDENTURE WITNESSETH, that, in consideration of the sum of [500*l.*] now paid to A. B., by C. D. (the

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Part I. of the 2nd schedule hereto, and the said C. D. and E. F. as to the documents specified in Part II. of the same schedule, hereby respectively acknowledge the right of the said G. H. to production and delivery of copies of the documents specified in the 2nd schedule hereto. And the said A. B. hereby undertakes for the safe custody of the documents specified in Part II. thereof.

receipt whereof A. B. hereby acknowledges), A. B., in exercise of all powers enabling him in this behalf, as beneficial owner, hereby appoints that all and singular the hereditaments hereinafter described shall henceforth be to the uses hereinafter declared concerning the same. **Form 76.**

5. And this Indenture also witnesseth, that A. B., as beneficial owner, hereby conveys and confirms to C. D. Testatum No. 2 (Grant).

6. All, &c. [*parcels*]. Parcels.

7. To hold the same unto and to the use of C. D. in fee simple. Habendum.

8. And A. B. hereby acknowledges the right of C. D. to production and delivery of copies of the documents of title mentioned in the schedule hereto, and hereby undertakes for the safe custody thereof. Deeds.

In witness, &c.

The Schedule above referred to.

Conveyance in Fee Simple of a Plot of Land subject to a Yearly Rent-charge and Reservation of Minerals. **Form 77.**

1. This Indenture, made, &c., between A. B., of, &c., of the one part, and C. D., of, &c., of the other part. Parties.

2. Witnesseth that, in consideration of the rent hereinafter limited, and of the covenants by the said C. D. hereinafter contained, the said A. B., as beneficial owner, hereby conveys unto the said C. D., Testatum.

3. All that plot of land situate at, &c., containing in the whole 230 superficial square yards of land or thereabouts, and also the dwelling-house and other buildings already erected by the said C. D. on the said plot of land. Parcels.

4. Except and reserving unto the said A. B. all mines and minerals lying within or under the said plot of land, with liberty to get and dispose of the same, as well as the mines and minerals lying under any other lands belonging to the said A. B., leaving sufficient pillars to support the surface of the same plot and any erections now erected or hereafter to be erected thereon. Reservation.

5. To hold the premises hereby conveyed unto the said C. D. and his heirs, to the several uses hereinafter limited concerning the same (that is to say), to the use that the said Habendum.

Form 77.

A. B., his heirs and assigns, may out of the said premises for ever hereafter receive and take one clear rent of 10*l.* sterling to be issuing and payable thereout by two equal half-yearly payments, on the [*dates*] in every year, free from all deductions, the first half-yearly payment whereof will become due on [*date*][1]; and subject to and charged with the said yearly rent, and the remedies by statute provided for recovery thereof, to the use of the said C. D. and his heirs.[2]

Covenant to pay rent-charge.

6. And the said C. D. hereby covenants with the said A. B. and his assigns, that the said C. D., his heirs and assigns, will yearly for ever hereafter pay unto the said A. B., his heirs and assigns, the said yearly rent of 10*l.*, by equal half-yearly payments, upon the days and in manner

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[1] § 44 of the Conveyancing Act, 1881 (if not expressly excluded), confers ample powers and remedies for recovering and compelling payment of a rent-charge; and § 45 of the same Act (which provides for the redemption of rents-charge upon payment of the value thereof as certified by the Copyhold Commissioners) does not apply to a rent-charge reserved on a sale.

[2] It is sometimes desirable to insert a provision to the following effect:—

Provided always and it is hereby agreed, that as between the premises hereby granted and the adjoining property of the vendors no easement of light or other easement whatever is hereby either granted as an appurtenance to the premises hereby granted, or reserved as an appurtenance to the said adjoining property of the vendor.

Compare the following form, in which rights of light are given:—

And it is hereby declared, that all existing lights and apertures in the buildings now upon the said plots edged respectively red and blue on the said plan shall, as between the parties hereto and their respective heirs and assigns, be deemed ancient lights. And that the said passage shall at all times hereafter be a common passage for the use for all purposes of the said parties hereto, their respective heirs, assigns, and tenants. And that the wall on the —— side of the said plot edged red, separating the same from the said plot edged blue, shall be deemed to be a party wall, and be used, repaired, and maintained accordingly.

aforesaid, without any deduction (the property tax in respect of the said yearly rent only excepted).[1] **Form 77.**

7. And it is hereby declared that the covenants for title herein by statute implied shall be subject to the statutory remedies for securing and recovering the said yearly rent. Limitation of implied covenants.

In witness, &c.

Conveyance in consideration of a Rent-charge of part of a Plot which is subject to a previous Rent-charge which the Vendor pays. **Form 78.**

1. This Indenture, made, &c., between A. B., of, &c. (hereinafter called "the vendor"), of the one part, and C. D., of, &c. (hereinafter called "the purchaser"), of the other part. Parties.

2. Witnesseth that, in consideration of the yearly rent-charge hereinafter limited, and of the covenants by the purchaser hereinafter contained, the vendor, as beneficial owner, hereby grants unto the purchaser and his heirs, Testatum.

3. All that [&c., *including reference to plan as in Form* 72], which hereditaments (together with the plot edged blue on the said plan) were by an indenture dated, &c., and made between, &c., granted unto the vendor, his heirs and assigns, subject to a perpetual yearly rent-charge of 20*l.* thereby charged thereon, and to covenants by the vendor and conditions therein contained. Parcels.

4. To hold the premises hereby granted (subject to the last-mentioned rent-charge, covenants, and conditions, but with such indemnity as is hereinafter contained against the said rent-charge and certain of the said covenants) unto the purchaser and his heirs, To the use that the vendor, his heirs and assigns, may henceforth receive a clear yearly rent-charge of 10*l.*, to be charged upon and payable out of the said premises, and to be paid by equal half-yearly payments, on, &c., without deduction, the first half-yearly payment thereof to be made on, &c. And subject and charged as aforesaid, To the use of the purchaser, his heirs and assigns. Habendum.

5. And the purchaser hereby covenants with the vendor that the purchaser will henceforth pay unto the vendor, his Covenant by purchaser to pay rent-charge;

[1] A covenant to maintain buildings of a specified annual value should be inserted. See Form 78, § 5, p. 358, *post*.

Form 78.

heirs and assigns, the said yearly rent-charge of £10 at the times and in manner aforesaid. And will, within one year from the date hereof, erect and finish, and for ever thereafter maintain and keep in good and substantial repair, upon the plot of land hereby granted, one or more good and substantial dwelling-house or dwelling-houses, or other building or buildings of brick or stone (or both materials), to be set in good lime mortar, fitted with good and sufficient timber, and roofed with good slates or tiles, which dwelling-house or dwelling-houses and building or buildings shall when finished be of the clear annual letting value of ——*l.* at least.

and to erect house;

and to observe covenants;

6. And will henceforth perform and observe all the covenants by the grantee (except the covenants for the payment of the said rent-charge of 20*l.*) and conditions contained in the said indenture of, &c., so far as they relate to the premises hereby granted.

and to indemnify vendor.

7. And will keep the vendor and the said plot edged blue on the said plan indemnified against all actions, proceedings, claims, demands, costs, damages, and expenses on account of any breach of the same covenants and conditions (so far as aforesaid) or any of them.

Covenant by vendor to pay superior rent-charge,

8. And the vendor hereby covenants with the purchaser that the vendor will henceforth pay the said yearly rent-charge of 20*l.* limited by the said indenture of [*date*], and perform and observe all the covenants by the grantee and conditions therein contained, so far as they relate to such of the premises thereby granted as are not hereinbefore granted [*or* the said plot edged blue on the said plan].

and to indemnify purchaser.

9. And will keep the purchaser indemnified against all actions, proceedings, claims, demands, costs, damages, and expenses by reason of the non-payment of the said rent-charge of 20*l.* or the breach of the said covenants and conditions, or any of them. And that if and whenever the purchaser shall be called upon for and shall pay the said rent-charge of 20*l.*, or any part thereof, or shall incur or sustain any costs, damages, or expenses on account of the non-payment thereof, the purchaser may reimburse himself or his tenant all money, costs, damages, and expenses so paid, incurred, or sustained by retaining the amount thereof out of the rent-charge hereby limited.

Form 78.

Power of re-entry.

10. PROVIDED ALWAYS, that if at any time or times during the lives of her present Majesty the Queen and her children and grandchildren now living, or of the survivors or survivor of them, or within twenty-one years after the death of the last survivor of them, or within any further period of time within which this present provision may lawfully be made to take effect, the said rent-charge hereinbefore limited, or any part thereof, shall be in arrear for three calendar months, or there shall be any breach, non-performance, or non-observance of the covenants by the purchaser hereinbefore contained or referred to or any of them, then and in any of the said cases the vendor, at any time thereafter, and notwithstanding any actual or constructive waiver of any previous cause or right of re-entry, may re-enter upon the said plot hereby granted, or any part thereof, in the name of the whole, and thereupon and thenceforth the same plot and the buildings thereon shall stand limited to the use of the vendor, his heirs, and assigns. [*Add acknowledgment as to deeds as in Form* 72, § 7, *p.* 349.]

IN WITNESS, &c.

Form 79.

CONVEYANCE IN FEE SIMPLE BY MORTGAGOR AND MORTGAGEE OF FREEHOLDS IN MORTGAGE TO A BUILDING SOCIETY.[1]

Parties.

1. THIS INDENTURE, made, &c., between A. B., of, &c. (hereinafter called "the vendor") of the first part, the X. Benefit Building Society (registered under the Building Societies Act, 1874, and hereinafter called "the society"), of the second part, and C. D., of, &c. (hereinafter called "the purchaser"), of the third part.

Mortgage.

2. WHEREAS the vendor being seised in fee simple of the hereditaments hereinafter described, did, by an indenture dated, &c., and made between the vendor of the one part, and the society of the other part, assure the said hereditaments to the society in fee simple by way of mortgage to secure 1,500*l.* and interest.[2]

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[1] If a receipt for the 1,500*l.* were indorsed on the mortgage, the society need not concur in this conveyance.

[2] The following longer form of recital is often used:—

Mortgage in fee simple.

2A. AND WHEREAS by an indenture, dated, &c., and made between A. B., of the one part, and the society, of the other

Form 79.

Sale. 3. And whereas the purchaser has agreed with the vendor for the purchase of the said hereditaments in fee simple for 3,000*l.*

Mortgage debt. 4. And whereas there is now due under the hereinbefore recited indenture the sum of 1,000*l.*, but all interest thereon has been paid.

Testatum. 5. Now this Indenture witnesseth, that, in consideration of 3,000*l.* upon the execution hereof by the purchaser paid, as to 1,000*l.* part thereof, to the society by the direction of the vendor (the receipt whereof the society hereby acknowledges), and as to 2,000*l.* residue thereof, to the vendor (the payment and receipt of which sums of 1,000*l.* and 2,000*l.*, making together 3,000*l.*, in manner aforesaid, the vendor hereby acknowledges), the vendor, as beneficial owner, hereby conveys and confirms, and the society, by the direction of the vendor, as mortgagee, hereby conveys to the purchaser,

Parcels. 6. All that messuage situate and being No. 5, X. Street, in the City of London.[1]

Habendum. 7. To hold the same unto and to the use of the purchaser and his heirs, Freed and discharged from all moneys secured

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part, in consideration of 754*l.* paid by the society to the said A. B., the said A. B. granted the hereditaments hereinafter described and hereby assured unto and to the use of the society in fee simple, subject to a proviso for redemption of the same premises by the said A. B., his heirs, executors, administrators, or assigns, on payment by him or them to the society or its assigns of 754*l.*, with interest for the same at the rate, on the day, and in the manner therein mentioned.

[1] The following clause may be used where the beams of the vendor's adjoining house rest on the wall of the house sold and conveyed :—

Reserving unto the vendor, his heirs and assigns, the right to retain in and upon the wall on the east side of the premises hereby granted all existing beams or other supports of the building now erected on the adjoining land of the vendor, and of replacing such beams or other supports by any others which may be necessary for the support of the same building or of any substituted building.

by, and all claims and demands under, the said indenture of mortgage. Form 79.

IN WITNESS, &c.

CONVEYANCE BY MORTGAGOR AND MORTGAGEE, THE PURCHASE-MONEY BEING PAID TO THE MORTGAGOR. Form 80.

1. THIS INDENTURE, made [*date*] between A. B., of, &c., of the first part, C. D., of, &c., and E. F., of, &c., of the second part, and G. H., of, &c., of the third part. Parties.

2. WHEREAS by an indenture, dated, &c., and made between, &c., the hereditaments hereby assured with other hereditaments were conveyed by A. B. to C. D. and E. F. in fee simple by way of mortgage for securing 900*l.* and interest. Mortgage.

3. AND WHEREAS the principal sum of 900*l.* remains due under the said indenture, but all interest thereon has been paid [as C. D. and E. F. hereby acknowledge].[1] State of debt.

4. AND WHEREAS A. B. has agreed with G. H. for the sale to him of the hereditaments hereby assured free from incumbrances at the price of 200*l.*

5. AND WHEREAS C. D. and E. F. being satisfied to rely upon the security of the other hereditaments comprised in the said indenture of mortgage, have agreed, at the request of A. B., to concur herein in manner hereinafter appearing.[2] Agreement to concur by mortgagee.

6. NOW THIS INDENTURE WITNESSETH, that, in consideration of 200*l.*, paid with the consent of C. D. and E. F. to Testatum.

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[1] In a case like this there is usually interest owing, and the following recital should then be used:—

3A. AND WHEREAS there is now due to C. D. and E. F. on the security of the said indenture of mortgage the sum of 900*l.*, together with interest thereon from [*date*]. State of mortgage debt.

[2] The following recital may be used, if preferred:—

5A. AND WHEREAS C. D. and E. F. being satisfied that the other hereditaments comprised in the said indenture of mortgage are a sufficient security for the said sum of 900*l.*, it has been agreed that the whole of the said sum of 200*l.* shall be paid to A. B., and that C. D. and E. F. shall concur herein in manner hereinafter appearing.

Form 80.

A. B. (of which sum of 200*l.* A. B. hereby acknowledges the receipt), C. D. and E. F., as mortgagees, and by the direction of A. B., as beneficial owner, hereby convey, and A. B., as beneficial owner, hereby conveys and confirms to G. H.,

Parcels. 7. ALL that [*parcels*].

Habendum. 8. TO HOLD to and to the use of G. H. in fee simple discharged from all money secured by and from all claims under the said indentures of mortgage.

Deeds. 9. And C. D. and E. F. hereby acknowledge the right of G. H. to production of the documents of title mentioned in the schedule hereto and to delivery of copies thereof.

IN WITNESS, &c.

The SCHEDULE above referred to.

[*To contain list of documents retained by C. D. and E. F.*]

Form 81. CONVEYANCE IN FEE SIMPLE BY A MORTGAGEE UNDER AN EXPRESS POWER OF SALE.

Parties. 1. THIS INDENTURE, made the [*date*], between C. D., of, &c., of the one part, and C. K., of, &c., of the other part.

Recital of mortgage. 2. WHEREAS by an indenture, dated, &c., and made between A. B., of the one part, and the said C. D., of the other part, the said A. B. assured the hereditaments hereinafter described to the use of the said C. D. and his heirs, by way of mortgage for securing 1,000*l.* and interest on the [*date*]. And it was thereby declared,[1] that it should be lawful for the said C. D. at any time after the said [*date*], without any further consent on the part of any person, to sell the hereditaments comprised in the said indenture of mortgage, together or in parcels, either by public auction or private contract, with power upon any such sale to make any stipulations which the said C. D. should think fit, and to buy in or rescind any contract for sale, and resell without being responsible for loss occasioned thereby, and for the purposes aforesaid or any of them to execute and do all such assurances and things as the said C. D. should think fit. And that no

[1] Care should be taken that this recital follows the words of the power in the mortgage.

purchaser at any such sale should be concerned to inquire whether any such notice as therein mentioned had been given, or whether any money remained owing on the security of the said indenture, or otherwise into the regularity or propriety of the said sale. And that, notwithstanding any irregularity or impropriety in any such sale, the same should, as regards the purchaser, be valid and effectual. Form 81.

3. And whereas the said C. D. has agreed with the said C. K. for the sale to him of the hereditaments comprised in the said indenture of mortgage, and the inheritance thereof in fee simple in possession, free from incumbrances, for 1,500*l.* Recital of agreement for sale.

4. Now this Indenture witnesseth, that, in pursuance of the said agreement, and in consideration of 1,500*l.* to the said C. D. paid by the said C. K. (the receipt whereof the said C. D. hereby acknowledges), the said C. D. as mortgagee, in exercise of the hereinbefore recited power of sale, and of all other powers (if any) enabling him in this behalf, hereby conveys to the said C. K., Testatum.

5. All that [*describe the property*]. Parcels.

6. To hold the same unto the said C. K. and his heirs freed and discharged from all equity of redemption and claims under the hereinbefore recited mortgage, To the use of the said C. K. and his heirs. Habendum.

In witness, &c.

Conveyance of Freeholds by Executors of a Mortgagee under express Power. Form 82.

1. This Indenture, made the ——th of ——, 1890, between A. B., of, &c., and C. D., of, &c., of the one part, and E. F., of, &c., of the other part. Parties.

2. Whereas by an indenture dated the 10th of November, 1869, and made between X. Y., of the one part, and G. H., of the other part, the said X. Y. conveyed the hereditaments hereby conveyed unto and to the use of the said G. H., his heirs and assigns (subject to the restrictive covenants hereinafter mentioned), by way of mortgage to secure payment by the said X. Y. to the said G. H. of 1,700*l.* with interest. And it was thereby declared that it should be lawful for the said G. H., his executors, administrators, or assigns, at any Mortgage.

Form 82.

time after the 10th of May, 1870, without any further consent on the part of the said X. Y., to sell the said hereditaments, either together or in parcels, and either by public auction or private contract, with power upon any such sale to make any stipulations as to title or evidence of title.[1]

Will of mortgagee.

3. And whereas the said G. H. duly made his will dated the 10th of May, 1884, and thereby gave, devised, and bequeathed all his real and personal estate unto and to the use of the said A. B. and C. D. upon the trusts therein mentioned. And he thereby appointed the said A. B. and C. D. executors of his said will.[2]

Death and probate.

4. And whereas the said G. H. died on the 16th of June, 1885, and his said will was duly proved by the said A. B. and C. D. in the principal probate registry of the High Court of Justice on the 27th of July, 1885.

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[1] If the buildings described in the parcels were erected after the date of the mortgage, insert the following recital:—

Building since mortgage.

2A. And whereas since the execution of the hereinbefore recited indenture the said G. H. has built upon the said piece of land certain messuages, with suitable offices and outbuildings.

[2] If the mortgagee died intestate, the sale will be by his administrator, and the recital will be as follows:—

Intestacy and administration.

3A. And whereas the said G. H. died intestate on [*date*], and letters of administration of his estate and effects were, on [*date*], granted to the said C. D. by the principal probate registry [*or* by the district probate registry at W.] of the High Court of Justice.

Or (in cases not within § 30 of the Conveyancing Act, 1881):—

Death of mortgagee intestate.

3B. And whereas the said G. H. died on, &c., intestate, so far as relates to the legal estate in the said hereditaments comprised in the hereinbefore recited indenture of mortgage, leaving the said A. B., his eldest son and heir-at-law, [and letters of administration to his estate and effects were, on the [*date*], granted to the said A. B., his eldest son and one of his next of kin].*

* See § 4 of the Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), and § 30 of the Conveyancing Act, 1881 (44 & 45 Vict. c. 41).

Form 82.

Agreement for sale.

5. And whereas the said A. B. and C. D. have agreed with the said E. F. for the sale to him of the said hereditaments at the price of 1,800*l.*

Testatum.

6. Now this Indenture witnesseth, that in consideration of the sum of 1,800*l.* now paid by the said E. F. to the said A. B. and C. D. (the receipt whereof the said A. B. and C. D. hereby acknowledge), the said A. B. and C. D., as mortgagees, in exercise of the power of sale contained in the said indenture of mortgage, hereby convey unto the said E. F.

Parcels.

7. All that piece of land situate in A. Street, D. Street, and B. Street, in the borough of C., containing in front to A. Street, twenty-three feet; in front to D. Street, ninety feet; and in front to B. Street, twenty-three feet; and containing in the whole by estimation 230 square yards or thereabouts, Together with the messuage or shop thereon, known as No. 72, A. Street, and No. 1, D. Street, aforesaid, and the two messuages or dwelling-houses thereon, known respectively as Nos. 3 and 5, D. Street, aforesaid, all which premises are delineated in the plan drawn in the margin hereof, and are therein coloured pink.

Habendum.

8. To hold the same unto and to the use of the said E. F. in fee simple, Freed and discharged from all equity of redemption and other claims under the said indenture of mortgage, but subject to the restrictive covenants contained in an indenture dated the 28th of October, 1869, and made between, &c., which covenants prohibit the exercise on the premises of certain noisy and obnoxious trades and businesses.

Covenant by purchaser.

9. And the said E. F. hereby covenants with the said A. B. and C. D. that the said E. F., and the owners for the time being of the premises hereby conveyed, will observe and perform the restrictions and restrictive covenants contained in the said indenture of the 28th of October, 1869, and will keep the said A. B. and C. D. and the estate of the said G. H. indemnified against all actions, proceedings, damages, losses, costs, and expenses in respect of any breach of such restrictions and restrictive covenants or any of them. Provided always, that this covenant shall not be personally binding upon the said E. F., his heirs, executors, or adminis-

Form 82. trators, except in respect of breaches committed during his or their ownership of the premises.

IN WITNESS, &c.

Form 83. CONVEYANCE OF FREEHOLDS BY MORTGAGEE UNDER STATUTORY POWER OF SALE.

Parties. 1. THIS INDENTURE [*&c., as in Form*].

Mortgage. 2. WHEREAS by an indenture, dated, &c., and made between Y. Z., of the one part, and the said A. B., of the other part, the said Y. Z. granted the hereditaments hereinafter described unto and to the use of the said A. B. in fee simple, by way of mortgage, for securing the payment of ——*l.*, on the ——th of ——, 1887.

Default. 3. AND WHEREAS the said Y. Z. made default in payment of the said sum of ——*l.*

Sale. 4. AND WHEREAS the said A. B. has agreed with the said C. D. for the sale to him of the said hereditaments in fee simple for ——*l.*

Testatum. 5. NOW THIS INDENTURE WITNESSETH, that in consideration of ——*l.* now paid by the said C. D. to the said A. B. (the receipt whereof the said A. B. hereby acknowledges), the said A. B., as mortgagee, and in exercise of the power for this purpose given to him by the Conveyancing Act, 1881, and of every other power (if any) enabling him in this behalf, hereby conveys unto the said C. D. and his heirs,

Parcels. 6. ALL that [*continue parcels according to description of property*].

Habendum. 7. TO HOLD the same [*continue as in Form* 81, § 6, p. 363].

IN WITNESS, &c.

Form 84. CONVEYANCE OF EQUITY OF REDEMPTION OF FREEHOLDS (CONCISE FORM).

Parties. 1. THIS INDENTURE, made, &c. [*date*], between A. B., of, &c., of the one part, and C. D., of, &c., of the other part.

Testatum. 2. WITNESSETH that, in consideration of ——*l.* to A. B. now paid by C. D. (the receipt whereof is hereby acknowledged), the said A. B. as beneficial owner hereby grants unto the said C. D.

Form 84.

3. All that [*insert description*].

Parcels.

Habendum.

4. To hold the same unto and to the use of the said C. D. and his heirs subject to the payment of the principal sum of ——*l.* now due under an indenture of mortgage dated, &c., and made between X. Y., of the one part, and the said A. B., of the other part, and to the interest henceforth to become due for the same.

Covenant to pay mortgage debt.

5. And the said C. D. hereby covenants with the said A. B. that the said C. D. will pay to the mortgagee on such payment being lawfully demanded the said principal sum of ——*l.* and the interest henceforth to become due for the same, and will keep the said A. B., his heirs, executors, and administrators indemnified against all consequences of the non-payment of the said principal sum and interest respectively and every part thereof.

In witness, &c.

Form 85.

Conveyance in Fee Simple by Tenants in Common of Undivided Shares in Freehold Property, with a Covenant that an Infant shall convey his presumptive Share on attaining Majority.

Parties.

1. This Indenture, made [*date*], between A. B., of, &c., of the first part, C. B., of, &c., of the second part, and E. F., of, &c., of the third part.

Recital of will.

2. Whereas X. B. died on [*date*], seised in fee simple of the hereditaments hereinafter described, having duly made his will dated, &c., and thereby devised all his real estate in the county of Y. unto and to the use of such one or more of his children as being male should attain the age of twenty-one years, and being female should attain that age or marry, and, if more than one, in equal shares.[1]

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[1] Instead of this recital the following may be used:—

2A. Whereas A. B., late of, &c. (hereinafter called "the testator"), duly made his will, dated, &c., and thereby devised the hereditaments hereinafter described [with other hereditaments] unto and to the use of [*set out the devise from the will*].

2B. And whereas the testator made several codicils to his

Form 85.

Recital as to testator's children.

3. And whereas the said X. B. had three children and no more, namely, the said A. B. and C. B., who have both attained the age of twenty-one years, and D. B., who attained the age of nineteen years on the [*date*] last.

Recital of agreement for sale.

4. And whereas the said A. B. and C. B. have agreed with the said E. F. for the sale to him of the hereditaments hereinafter described for the sum of 3,000*l.*

Recital of investment of one-third of purchase-money.

5. And whereas pursuant to an agreement in that behalf the sum of 1,000*l.*, being the purchase-money for the expectant undivided third part of the said D. B. of and in the said hereditaments, has been invested in the joint names of the said A. B., C. B., D. B., and E. F. [*specify the investment*], and the said A. B. and C. B. have agreed to enter into the covenant hereinafter contained.

Testatum.

6. Now this Indenture witnesseth, that, in pursuance of the said agreement in this behalf, and in consideration of the sums of 1,000*l.* and 1,000*l.* now paid by the said E. F. to the said A. B. and C. B. respectively, and the said sum of 1,000*l.* invested as hereinbefore recited (the receipt and investment of which sums of 1,000*l.*, 1,000*l.*, and 1,000*l.*, making together the said purchase-money of 3,000*l.*, the said A. B. and C. B. hereby acknowledge), the said A. B., as beneficial owner as to his one undivided third part and all other his share and interest of and in the hereditaments hereinafter described, hereby conveys, and the said C. B., as beneficial owner as to his one undivided third part and all other his share and interest of and in the same hereditaments, hereby conveys to the said E. F.,

Parcels.

7. All those the two undivided third parts or shares and all other the parts or shares, whether vested or contingent, of them the said A. B. and C. B. and each of them, of and in all that [*parcels describing the property*].

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said will, none of which revoked or affected the devise aforesaid.

2c. And whereas the testator died on [*date*], and his said will and codicils were on [*date*] duly proved by the executors thereby appointed.

2d. And whereas the testator was at his death seised in fee simple of the hereditaments hereinafter described.

Form 85.

8. To HOLD the same unto and to the use of the said E. F. and his heirs.

Habendum.

Covenant that infant will convey.

9. AND the said A. B. and C. B. hereby covenant with the said E. F. and his assigns that the said D. B. will, at the request and cost of the said E. F., his heirs or assigns, when, and so soon as the said D. B. shall have attained the age of twenty-one years, or at any time thereafter, within twelve calendar months after being required, execute and deliver to the said E. F., his heirs or assigns, a proper assurance to him or them of the undivided third part or share of the said D. B. of and in the said premises; and also, that in case the said D. B. shall die without having attained the age of twenty-one years, or without having signed, sealed, and delivered such assurance as aforesaid, the said A. B. and C. B., their heirs or assigns, will at any time after such decease of the said D. B. as aforesaid, and whenever required by the said E. F., his heirs or assigns, and at the cost of the person requiring the same, execute such further assurances for better assuring the premises to the use of the said E. F. and his heirs, as by him or them shall be reasonably required.

Covenant as to invested one-third of purchase-money.

10. AND the said E. F. hereby covenants with the said A. B. and C. B., that if the said D. B. shall attain the age of twenty-one years and execute such assurance to the said E. F. as aforesaid, the said E. F. will, upon the execution of such assurance, concur with the said A. B. and C. B. in transferring the said sum of £1,000 so invested as aforesaid into the name of said D. B., and that if the said D. B. shall die under the age of twenty-one years, and the said A. B. and C. B. shall thereupon execute such further assurance of the premises to the said E. F. as aforesaid, the said E. F. will, upon the execution of such further assurance, transfer the said sum of £1,000 into the names of the said A. B. and C. B. only.

IN WITNESS, &c.

CONVEYANCE OF FREEHOLDS TO THE USES OF A SETTLEMENT. Form 86.

Parties.

1. THIS INDENTURE, made the —— of ——, 18—, between A. B., of, &c., of the first part, Sir C. D., of, &c., Knight, of

Form 86. the second part, and E. F., of, &c., and G. H.,[1] of, &c., of the third part.

Recital of seisin.

2. WHEREAS the said A. B. is seised in fee simple free from incumbrances of the hereditaments hereby assured.[2]

Recital of settlement. (Purchaser's title.)

3. AND WHEREAS by an indenture of settlement dated, &c., and made between, &c. (hereinafter called "the settlement"), certain hereditaments now stand limited to the use of the said C. D. for life [and it was thereby declared that it should be lawful for the trustees of the settlement at any time thereafter, with the consent of the person who should for the time being be entitled under the settlement to the first estate of freehold in the hereditaments thereby settled, to sell the hereditaments thereby settled, or any part thereof, and that the said trustees should with the like consent apply the moneys to arise from any such sale (among other purposes) in the purchase of freehold hereditaments situate in England or Wales, or otherwise as therein mentioned, to be settled to the

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[1] The present trustees of the settlement.

[2] The following recitals of a vendor's title will in some cases be useful:—

Seisin in fee simple.

2A. WHEREAS the said A. B. is seised of the hereditaments hereinafter described for an estate of inheritance in fee simple in possession free from incumbrances.

Seisin in fee simple subject to mortgage.

2B. WHEREAS the said A. B. is seised in fee simple of the hereditaments hereinafter described [subject to a mortgage dated the ——th of ——, 1889, for securing the payment of £——, with interest at £4 per cent. per annum to X., but free from all other incumbrances].

Conveyance in fee simple general.

2C. WHEREAS by an indenture, dated, &c., and made between K. L., of the one part, and M. N., of the other part, the hereditaments hereinafter described and hereby assured were assured unto and to the use of the said M. N., his heirs and assigns [*or* to the use of the said M. N. in fee simple].

Conveyance in fee simple particular.

2D. AND WHEREAS by an indenture, dated, &c., and made between the said M. N., of the one part, and A. B., of the other part, the said M. N. granted the hereditaments hereinafter described, and hereby assured, unto and to the use of the said A. B., his heirs and assigns.

same uses, upon the same trusts, and with and subject to the same powers and provisions as were in the settlement contained concerning the hereditaments thereby settled, or as near thereto as the deaths of parties and other circumstances would admit [1].

Appointment of new trustees.

4. And whereas by an indenture [*date*], and made between the said Sir C. D., of the first part, the said E. F., of the second part, and the said G. H., of the third part, the said G. H. was (pursuant to a power for that purpose in the settlement contained) appointed a trustee of the settlement, in the place of the said L. M., who desired to be discharged from the trusts thereof; and all the hereditaments then subject thereto were duly vested in the said E. F. and G. H. to the uses upon, with and subject to the trusts, powers and provisions contained in the settlement.[2]

Sales.

5. And whereas sales have been made of portions of the said settled hereditaments [pursuant to the powers contained in the settlement].[1]

Purchase.

6. And whereas the said E. F. and G. H., as trustees of the settlement, have, with the consent of the said Sir C. D., agreed with the said A. B. for the purchase of the hereditaments hereby assured at the price of £——.

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[1] Where sales have been made by a tenant for life, and the purchase is being made by way of reinvestment of capital moneys, the portions of their recitals in brackets may be omitted.

[2] The following are other recitals of appointment of new trustees of a settlement and of a will:—

New trustee of settlement.

4a. And whereas, by an indenture, dated, &c., and made between, &c., the said A. B. and C. D. [in exercise of a power for that purpose contained in the hereinbefore-recited indenture of the [*date*]], appointed the said E. F. to be a trustee of the said indenture in the place of the said G. H.

Death of trustees, and appointment of successors.

4b. And whereas the said A. B. and C. D. died on [*dates*] respectively, and in exercise of the statutory power in that behalf, the said G. H. and I. K. were duly appointed trustees thereof [*or* of the said will of the said X. Y.], [*or as the case may be*], in the place of the said A. B. and C. D. And by the same indenture, the hereditaments subject to the trusts of the said will [*or* settlement] were duly vested in the said G. H. and I. K. upon the trusts of the said will [*or* settlement].

Form 86.

Testatum. 7. Now this Indenture witnesseth, that, in pursuance of the said agreement, and in consideration of £—— now paid to the said A. B. by the said E. F. and G. H., with the consent of the said Sir C. D., out of capital moneys in their hands which have arisen from such sales as aforesaid (the receipt whereof the said A. B. hereby acknowledges), the said A. B., as beneficial owner, hereby grants and conveys unto the said E. F. and G. H.,

Parcels. 8. All that farm known as X. farm, situate in the parish of Y., in the county of Z., containing by estimation —— acres, —— roods, and —— perches, and consisting of the buildings and closes of land more fully described in the schedule hereto and delineated in the plan drawn in the margin hereof, and therein coloured pink, the numbers in the said plan referring to the same numbers in the said schedule.

Habendum. 9. To hold the same unto the said E. F. and G. H. and their heirs, To such uses, upon such trusts, and with and subject to such powers and provisions as are in and by the settlement declared of and concerning the freehold hereditaments thereby limited, or as near thereto as the deaths of parties and other circumstances will now admit.

In witness, &c.

The Schedule above referred to.

No. on Plan.	Name of Field.	Cultivation.	A. R. P.

Form 87. Conveyance of Freeholds on Partition by Separate Deeds.

Parties. 1. This Indenture, made [*date*], between A. B., of, &c., of the first part, C. D., of, &c., of the second part, E. F., of, &c., of the third part.

Purchases. 2. Whereas the said A. B. and C. D. have purchased at

various times certain properties in Middlesex and elsewhere, which have been conveyed to or vested in them as tenants in common in equal shares. **Form 87.**

3. And whereas the said A. B. and C. D. have agreed to make a partition of the several properties acquired by them as aforesaid, and it has been agreed that the hereditaments hereinafter described shall become the property of, and be held by, the said C. D. in severalty. Agreement for partition.

4. And whereas, in pursuance of the said agreement, the hereditaments to be held by the said A. B. in severalty have already been conveyed to him. Conveyance to A. B.

5. Now this Indenture witnesseth, that, in further pursuance of the said agreement, and for further effectuating the said partition, and in consideration of the hereinbefore-recited conveyance to the said A. B., the said A. B., as beneficial owner, as to the one equal undivided moiety of which he claims to be seised in the hereditaments hereby conveyed, hereby conveys, and the said C. D., as to the other undivided moiety of the same hereditaments, hereby conveys unto the said E. F. Testatum.

6. All that [*continue proper parcels*], Parcels.

7. To hold the premises hereby conveyed unto the said E. F. and his heirs, to the use of the said C. D. and his heirs, in severalty. Habendum.

In witness, &c.

Conveyance of Freehold on Partition by one Deed by Joint Tenants. **Form 88.**

1. This Indenture, made, &c., between A. B., of, &c., of the first part, C. D., of, &c., of the second part, and E. F., of, &c., of the third part. Parties.

2. Whereas the said A. B. and C. D. are seised in fee simple in possession as joint tenants of the hereditaments hereinafter described. Recital of title.

3. And whereas the said A. B. and C. D. have agreed to make such partition of the said hereditaments as hereinafter appears. Agreement.

4. Now this Indenture witnesseth, that in pursuance of the said agreement, and in consideration of the premises, the Testatum.

Form 88.

said A. B. and C. D., as beneficial owners, hereby grant unto the said E. F.—

Parcels.

5. FIRST, ALL and singular the hereditaments described in the first schedule hereto, and SECONDLY, all and singular the hereditaments described in the second schedule hereto.

Habendum.

6. TO HOLD the same unto the said E. F. and his heirs, as to the entirety of the hereditaments described in the first schedule hereto, to the use of A. B., his heirs and assigns in severalty, and as to the entirety of the hereditaments described in the second schedule hereto, to the use of the said E. F., his heirs and assigns in severalty.

Acknowledgment.

7. AND the said A. B. hereby acknowledges the right of the said C. D. to production and delivery of copies of this indenture, and the document specified in the third schedule hereto, and hereby undertakes for the safe custody thereof.

IN WITNESS, &c.

The 1st SCHEDULE above referred to.

[*Insert description of land to be taken by A. B.*]

The 2nd SCHEDULE above referred to.

[*Insert description of land to be taken by C. D.*]

The 3rd SCHEDULE above referred to.

[*Insert list of deeds retained by A. B.*]

Form 89.

CONVEYANCE OF LIFE INTEREST IN FREEHOLDS.

Parties.

1. THIS INDENTURE, made, &c., between A. B., of, &c., of the one part, and C. D., of, &c., of the other part.

Recital of will.

2. WHEREAS J. S., late of, &c., deceased, duly made his will dated, &c., and thereby devised the hereditaments hereinafter described unto the said A. B. for his life with remainders over.

Testator's death.

3. AND WHEREAS the said J. S., being then seised in fee simple of the said hereditaments, died on, &c., without having revoked or altered his said will, which was on [*date*] duly proved by the executors therein named.[1]

[1] For other recitals of wills, see notes to Form 85, p. 367, *ante*.

Form 89.

4. Now this Indenture witnesseth, that, in consideration of £735 paid to the said A. B. by the said C. D. (the receipt whereof the said A. B. hereby acknowledges), the said A. B. hereby conveys unto the said C. D. Testatum.

5. All that piece of land containing 20a. 3r. 16p., or thereabouts, situate at X., in the county of Y., on the east and south of a messuage belonging to the said C. D., and now in his occupation, as the same with the abuttals thereof is delineated in the plan drawn in the margin hereof and therein coloured pink. Parcels.

6. To hold the same unto and to the use of the said C. D. and his heirs during the remainder of the life of the said A. B. Habendum.

7. And the said A. B. hereby covenants with the said C. D., that notwithstanding anything by the said A. B., or any person through whom he derives title otherwise than by way of purchase for valuable consideration, done, omitted, or knowingly suffered, the said A. B. has power to grant all the premises to the use of the said C. D. during the life of the said A. B. And that the same may be quietly enjoyed accordingly during the life of the said A. B., free from interruption or incumbrances by him. And that the said A. B., and every person claiming through or in trust for him, or through or in trust for any such person as aforesaid, will, at all times, at the cost of the said C. D., his heirs and assigns, execute and do all such assurances and acts for further assuring the premises, or any part thereof, to the said C. D., his heirs and assigns, during the life of the said A. B., as by him or them shall be reasonably required. Covenants for title.

8. And the said A. B. hereby acknowledges the right of the said C. D. to production and delivery of copies of the documents specified in the schedule hereto, and hereby undertakes for the safe custody thereof. Acknowledgment as to deeds.

In witness, &c.

The Schedule above referred to.

Form 90.

Conveyance of Land for Burial Ground under 43 Geo. 3, c. 108.

Parties.

1. This Indenture, made, &c., between [*donor*] of the first part, [*ordinary*] of the second part, and [*vicar*] of the third part.

Seisin.

2. Whereas the said [*donor*] is seised in fee simple of the piece of land hereinafter described.

Churchyard too small.

3. And whereas the churchyard of the vicarage of X., in the diocese of R., is too small for the burial of the parishioners of the said vicarage.

Intention to convey.

4. And whereas the said piece of land adjoins the churchyard of the said vicarage, and is convenient to be added thereto, and the said [*donor*] is desirous and, with the consent and approbation of the said [*ordinary*], as the ordinary of the said vicarage, intends to give and vest in the said vicar and his successors the said piece of land, to be applied for the enlargement of the said churchyard, and for ever hereafter to be used as a burial ground for the parishioners of X. aforesaid, pursuant to the statute passed in the forty-third year of the reign of his late Majesty King George the Third, intituled "An Act to promote the building, repairing, or otherwise providing of Churches and Chapels, and of Houses for the residence of Ministers, and the providing of Churchyards and Glebes."

Testatum.

5. Now this Indenture witnesseth, that, in consideration of the premises, he the said [*donor*], in pursuance of the power given by the said statute, and of every other power enabling him in this behalf, and with the consent and approbation of the said [*ordinary*], hereby conveys to and vests in the said [*vicar*] and his successors, vicars of X. aforesaid.

Parcels.

6. All that piece of land, part of a close called the churchyard piece, adjoining the churchyard of the said vicarage of X., and delineated on the map in the margin hereof, and thereon coloured blue.

Habendum.

7. To hold the same unto and to the use of the said [*vicar*] and his successors,[1] vicars of X. aforesaid, for ever, as and for

[1] The word "successors" is appropriate here, because the vicar is a corporation sole. In the case of a corporation aggregate—*e.g*, a joint stock company—the word successors should not be used. The preferable form of limitation is, then, "in fee simple."

additional burial ground, and to be added to the churchyard of the said vicarage for ever for the interment of the inhabitants of the aforesaid parish of X. **Form 90.**

8. And the said [*donor*] hereby covenants with the said [*vicar*] and his successors, vicars of X. aforesaid, that the said [*donor*], and every person claiming through or in trust for him, will at all times, at the cost of the person requiring the same, execute and do such further assurances and acts for more effectually conveying the said piece of land to the use of the said [*vicar*] and his successors, vicars of X. aforesaid, for ever, for the purpose aforesaid, as by him or them shall be lawfully and reasonably required. Covenant for further assurance.

In witness whereof to this indenture the said [*donor*] and [*vicar*] have set their hands and seals, and the said [*ordinary*] has set his hand and caused his episcopal seal to be affixed, the day and year first above written.

Conveyance of Freehold Land by Tenant for Life under Settled Land Act, 1882, to a Burial Board of Land for a Cemetery. **Form 91.**

1. This Indenture, made [*date*], between A. B., of, &c., of the first part, C. D. and E. F., of, &c., of the second part, and the Burial Board for X., in the parish of Y., in the county of Z. (constituted under the provisions of the Burial Acts, 1852 to 1885, and hereinafter called "the Board"), of the third part. Parties.

2. Whereas under the will dated, &c., and proved on, &c., of W., deceased, the said A. B. is tenant for life in possession of the piece of land hereinafter described, and the said C. D. and E. F. are the present trustees of the said will for the purposes of the Settled Land Acts, 1882 to 1890. Title of Vendor.

3. Now this Indenture witnesseth, that in consideration of £1,000 now paid by the Board to the said C. D. and E. F. by the direction of the said A. B. (the receipt whereof is hereby acknowledged), the said A. B., as beneficial owner, in exercise of the powers for this purpose given to him by the Settled Land Act, 1882, and of every other power (if any) enabling him in this behalf, hereby conveys to the Board Testatum.

4. All that [*describe piece of land intended to be conveyed*]. Parcels.

5. Together with all ways, rights and appurtenances to the said piece of land in fact or by reputation belonging. General words.

Form 91.

And all such estate, right, title and interest in and to the same as the said A. B. is or shall become seised or possessed of or is by statute or otherwise empowered to convey. To HOLD the premises to the Board in fee simple according to the true intent and meaning of the said Burial Acts.

Acknowledgment as to deed.

6. AND the said A. B. hereby acknowledges the right of the Board to production and delivery of copies of the documents specified in the schedule hereto (which are in his possession).[1]

IN WITNESS, &c.

Form 92.

CONVEYANCE OF FREEHOLD LAND BY A TENANT FOR LIFE UNDER THE SETTLED LAND ACT, 1882, TO A DISTRICT COUNCIL FOR PUBLIC PLEASURE GROUND.

Parties.

1. THIS INDENTURE, made [*date*], between A. B., of, &c. (tenant for life in possession of the hereditaments hereinafter assured under the will proved at, &c., on, &c., of his late father, C. B.), of the first part, C. D., of, &c., and E. F., of, &c. (trustees with power of sale of the said hereditaments under the said will), of the second part, and the district council for the district of, &c. (hereinafter called "the council"), of the third part.

Testatum.

2. WITNESSETH, that in consideration of the sum of £—— now paid by the council to the said C. D. and E. F. by the direction of the said A. B. (the receipt whereof is hereby acknowledged), and the said A. B., as beneficial owner, in exercise of the powers conferred on him by the Settled Land Act, 1882, and of every other power (if any) enabling him in this behalf, hereby grants

Parcels.

3. ALL that piece of land [*add description*].

Reservation.

4. EXCEPT AND RESERVING out of the grant hereby made all minerals within and under the said plot, with liberty for the persons entitled thereto, and all persons authorized by them, to get the same, making compensation for surface damage.

Habendum.

5. To HOLD the premises unto and to the use of the council in fee simple for the purpose of and to the intent that the premises shall at all times hereafter be used as

[1] Add Schedule of Deeds.

public walks and pleasure grounds within the meaning of the Public Health Act, 1875, and for no other purpose. **Form 92.**

6. And the council, for itself and its assigns, hereby covenants with A. B. and his assigns (and separately with C. D., E. F. and their assigns, to the intent that this covenant may enure for the benefit of all persons having or claiming title through A. B. or his successors in title to any hereditaments adjoining or near to the land hereby granted to which A. B. is now entitled for any estate or interest), not to erect buildings except a lodge or cottage for gatekeeper or gardener, or buildings required in connection with the use of the land as public walks or pleasure grounds, and not to allow the land to be used for any other purpose, or any nuisance to take place thereon. [*Add proviso qualifying A. B.'s statutory covenant for title and acknowledgment by C. B. as to deeds.*] Covenant by council.

In witness, &c.

Conveyance of Freeholds to a County Council under Local Government Act, 1888. **Form 93.**

1. This Indenture, made [*date*], between A. B., of, &c., of the one part, and the county council of the county of —— (hereinafter called "the council"), of the other part. Parties.

2. Whereas the said A. B. is seised in fee simple free from incumbrances of the plot of land hereinafter described. Title.

3. And whereas at a meeting of the council held on [*date*], it was resolved that a sum not exceeding £—— be granted out of the county fund to enable the Main Roads and Bridges Committee of the council to purchase the said plot. Resolution to purchase.

4. And whereas the council, through the Main Roads and Bridges Committee, has agreed with the said A. B. for the purchase of the said plot at the price of £——. Agreement.

5. Now this Indenture witnesseth [*continue the draft as in Form 92, p. 378, omitting all reference to the Settled Land Act, and altering the habendum and covenant as to the purposes for which the land is to be used*]. Testatum.

[1] The county council may make purchases under 55 & 56 Vict. c. 31 for small holdings, and under 55 & 56 Vict. c. 43 for the use of volunteer and yeomanry corps.

Form 94. GRANT BY A TENANT FOR LIFE TO A DISTRICT COUNCIL OF THE RIGHT TO CONSTRUCT AND MAINTAIN A SEWER IN CONSIDERATION OF A PERPETUAL RENT-CHARGE TO BE CHARGED ON RATES LEVIABLE BY THE COUNCIL.

Parties. 1. THIS INDENTURE, made the —— of ——, 18—, between A. B., of, &c. (tenant for life in possession of the lands hereinafter described under the will dated, &c., and proved at, &c., on, &c., of X., deceased), of the one part, and the district council for the district of ——, in the county of ——, of the other part.

Testatum. 2. WITNESSETH, that in consideration of the rent-charge hereinafter granted (the amount of which has been determined by two able practical surveyors pursuant to the provisions of the Lands Clauses Consolidation Acts, 1845 and 1860, parts of which are incorporated in the Public Health Act, 1875), the said A. B., as beneficial owner, in exercise of the powers vested in him by the said Acts or some of them, and of every other power (if any) enabling him in this behalf, hereby grants unto the council the rights or easements following, namely:—

(1.) Of constructing and maintaining in perpetuity a sewer or line of sewage pipes 20 inches in diameter under the land of the said A. B. delineated in the plan drawn hereon between the points marked A and B on the said plan, in the position and direction indicated by the red line shown on the said plan (which line shows the centre line of the said sewer), with the six manholes also shown on the said plan;

(2.) Of entering from time to time into and upon the lands shown on the said plan with surveyors, workmen, horses, carts and other persons and things for the purpose of constructing, inspecting, amending, repairing, renewing and cleansing the said sewer and manholes, and of doing and executing in, upon or under the said lands such things and works as may be necessary for the purposes aforesaid; and

(3.) Of using the said sewer as an outfall sewer for the sewage refuse and other waters of the said district, the several rights or easements hereby granted

being subject to the conditions hereinafter contained.

Habendum.

3. To HOLD the same (subject as aforesaid) unto and to the use of the council in fee simple.

Conditions.

4. PROVIDED ALWAYS that the rights or easements hereinbefore granted are so granted upon and subject to the conditions following, namely:—

(a) The land over which rights or easements are hereinbefore granted shall be limited to the width of 3 feet on each side of the centre line of the said sewer;

(b) The council shall make full compensation to the said A. B. and his successors in title and his and their tenants for all loss and damage which may from time to time be sustained by him and them respectively by reason or in consequence of the exercise of any of the said rights or easements or of any defect in the construction or condition of the said sewer;

(c) Nothing herein contained shall confer on the council, or its assigns, any right to support for the sewer and works to be laid and constructed under the powers aforesaid from any mines or other minerals under the land through, over or under which the same sewer and works shall be laid and constructed, or any adjoining lands; but the rights of A. B., his successors in title and his or their assigns, and the council and its assigns respectively, to such mines and minerals shall be regulated by the provisions of the Public Health Act, 1875 (Support of Sewers), Amendment Act, 1883, and the sections of the Waterworks Clauses Act, 1847, incorporated therewith and modified thereby.

Grant of rent-charge.

5. AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the grant hereinbefore contained the council, in exercise of all powers vested in it by the said Acts or any of them or otherwise, hereby grants unto the said A. B. and his heirs one clear perpetual annual rent-charge of £——, to be payable from the [*date*] by equal half-yearly payments on [*dates*] in every year, free from all taxes and deductions except property tax (the first payment to be made on [*date*]),

Form 94.

and to be a first charge upon the funds of or rates under the Public Health Act, 1875, or any Act for the time being in force amending the same leviable by the council and properly chargeable therewith. To hold the same rent-charge unto the said A. B. and his heirs to, upon and for the uses, trusts and purposes to, upon and for which the rents and profits of the land through, over or under which the said easements are hereinbefore granted stood settled or assured at or immediately before the execution hereof.

Covenant to pay rent-charge.

6. And the council hereby covenants with the said A. B. and his assigns, and as separate covenants with all and every other the person or persons for the time being entitled to the said rent-charge under the limitations aforesaid, that the council and its assigns will at all times duly pay the said yearly rent-charge to the said A. B. or his heirs or other the person or persons for the time being entitled thereto free from all deductions (except as aforesaid) at the time and in manner hereinbefore appointed for payment thereof. And will always observe the several conditions subject to which the said rights and easements are hereinbefore granted.

In witness, &c.

[*Add proviso restricting implied covenants, as in* § 8, *Form* 75, *p.* 353].

Form 95. Grant to a Municipal Corporation of a Right to Lay and Maintain Water and other Pipes.

Parties.

1. This Indenture, made [*date*], between A. B., of, &c., of the one part, and the Mayor, Aldermen, and citizens of the city of —— (hereinafter called "the corporation"), of the other part,

Testatum.

2. Witnesseth, that in consideration of £—— to the said A. B., this day paid by the corporation (the receipt of which the said A. B. hereby acknowledges), the said A. B., as beneficial owner, hereby grants to the corporation the perpetual easement and rights following, namely:—

(1.) Of constructing, placing, laying, inspecting, maintaining, cleansing, repairing, renewing, conducting, and managing in, through, over, and under the strip of land, of 11 yards in width, situate, &c., and coloured red on the plan hereon, an aqueduct consisting of

Form 95.

three conduits or lines of pipes (underground), to be constructed at the same or at different times, when and as the corporation shall determine, with all necessary, proper, and convenient works (underground), including all works necessary for the purpose of telegraphic or other electric communication (underground), in connection with the undertaking authorized by the [*special*] Act, 1890;

(2.) Of ingress, egress, and regress, subject to the right of the occupiers of the land under which such pipes are laid, to, upon, and from the said land, and of entering and passing over and using the same, with or without all necessary and appropriate means and modes of access for the purposes of the said Act, and the several Acts incorporated therewith, at all times, as well after the completion as during the execution of the works, for the purpose of exercising any of the easements or rights aforesaid, and for all incidental purposes;

(3.) The easement or right to the benefit of, and the power of enforcing the restrictions following, namely:—

(a) The said A. B., his heirs and assigns, shall use the surface of the said land as grass, arable, pasture or garden ground, or as a farmyard, or as roads, or for any one or more of such purposes;

(b) No building is to be erected on the said land except walls or other usual fences, constructed with such gates or openings (to be made by, and at the expense of, the corporation) as may admit of the free exercise by the corporation of the easements and rights aforesaid;

(c) Such user of the surface, and also any user by the said A. B., his heirs or assigns, of the subsoil are in all respects to be subservient and subject to the exercise by the corporation of the easements and rights aforesaid, and are not to be allowed to injure or interfere with the exercise thereof, or with the works of the corporation, but subject as

Form 95.

aforesaid, the said A. B., his heirs and assigns, shall be entitled to construct any new or intended drains across (whether above or beneath) the pipes laid by the corporation or their assigns.

Habendum.

3. To HOLD, exercise, and enjoy the easements and rights hereinbefore granted to the corporation for ever for the purposes of the undertaking authorized by the [*special*] Act, 1890.

Covenants by corporation.

4. AND the corporation hereby covenants with the said A. B. and his assigns as follows:—

(1.) No part of the surface of the said land shall be fenced off or severed by the corporation from the adjoining land except such temporary fencing off or severance as may be necessary or convenient during and for the purpose of the execution of the works hereby authorized.

(2.) If the said aqueduct be laid so that the upper surface thereof shall be less than 2 feet 6 inches below the present natural surface of the ground, the said A. B., his heirs and assigns, shall be entitled to additional compensation for any damage by severance or otherwise which he or they may sustain in consequence thereof, such additional compensation to be determined in case of difference in the manner provided by the Lands Clauses Consolidation Act, 1845.

(3.) The corporation shall, in the exercise of the easements and rights aforesaid, do, or cause to be done, as little damage as possible to the said land and to the adjoining land of the said A. B., and the buildings for the time being on such adjoining land.

(4.) The corporation shall from time to time, on demand, make full compensation to the said A. B., his heirs and assigns in actual possession (or to the tenants and occupiers of such lands and buildings respectively, as the case may be), for all damage or injury which shall be done or occasioned to such buildings or to the surface of the said lands respectively, or to the crops for the time being thereon, by reason of

the exercise by the corporation of all or any of the easements and rights aforesaid. Form 95.

(5.) The corporation shall, when any land shall be opened or broken up in the exercise of any of the easements and rights aforesaid, from time to time lay aside all productive soil, and afterwards replace the same uppermost on the land from whence the same shall have been taken, and shall restore the surface as nearly as practicable to its original level and condition, and with all convenient speed complete the work for which such land shall have been opened or broken up.

(6.) The corporation shall make good and restore, so far as practicable, all fences and drains interfered with in constructing the works or in exercising any of the easements and rights aforesaid, and if not practicable, shall make compensation for any damage sustained by the said A. B., his heirs and assigns, in consequence thereof.

[*Add acknowledgment and undertaking by A. B. as to deeds.*]

In witness, &c.

Conveyance in Fee Simple by a Municipal Corporation with absolute Covenants for Title. Form 96.

1. This Indenture, made [*date*], between the Mayor, Aldermen, and burgesses of the Borough of X., in the County of Y. (hereinafter called "the corporation"), of the one part, and A. B., of, &c., of the other part, Parties.

2. Whereas the corporation is seised in fee simple in possession of the lands hereinafter granted free from incumbrances, and has [in exercise of the power in this behalf vested in it under [*special*] Act][1] agreed to sell the same to A. B. for £——, and to enter into such absolute covenants for the title as are hereinafter contained. Recitals.

[1] Unless some special Act obtained by the corporation authorizes the sale by it of land not required for the purposes of the undertaking authorized by the Act, the consent of the Local Government Board is necessary, and the following words should be substituted for those in brackets: "with the consent of the Local Government Board." See 45 & 46 Vict. c. 50, § 108, and 51 & 52 Vict. c. 41, § 72.

Form 96.

Testatum. 3. Now this Indenture witnesseth, that, in consideration of £—— now paid by A. B. to, and acknowledged by, the corporation, the corporation, as beneficial owner, hereby conveys unto A. B.,

Parcels. 4. All that [*insert description*].

Habendum. 5. To hold the same unto and to the use of A. B. and his heirs.

Covenant. And the corporation hereby covenants with A. B., his heirs and assigns, that the covenants by the corporation herein implied for the title to, and further assurance of, the premises, shall operate and take effect without any qualification or restriction as to the persons to or against whose acts, omission, or default such costs relate.

In witness, &c.

Form 97.

Covenant to Surrender Copyholds.

Parties. 1. This Indenture, made [*date*], between A. B., of, &c., of the one part, and C. D., of, &c., of the other part.

Seisin and sale. 2. Whereas the said A. B., being seised to him and his heirs of an estate of inheritance according to the custom of the manor of X., of the hereditaments hereinafter described, has agreed to sell the same to the said C. D. for £700.

Covenant to surrender. 3. Now this Indenture witnesseth, that, in pursuance of the said agreement, and in consideration of £700 now paid by the said C. D. to the said A. B. (the receipt whereof the said A. B. hereby acknowledges), the said A. B., as beneficial owner,[1] hereby covenants with the said C. D. that the said A. B. will forthwith surrender into the hands of the lord of the manor of X. aforesaid,

Parcels. 4. All those pieces of land [*parcels from court roll*].

5. To the use of the said C. D., his heirs and assigns, at the will of the lord, according to the custom of the said manor, subject to the rents, heriots, fines, suits, and services therefor due and of right accustomed.

In witness, &c.

[1] By this deed covenants for title under § 7 of the Conveyancing Act, 1881, are implied.

Surrender of Copyholds.[1]

Form 98.

Manor of X. } Be it remembered, that out of Court on [*date*], A. B., of, &c., a copyhold tenant of this manor, and M. B., his wife, came before Y. Z., steward of the said manor, and in consideration of £700 to the said A. B. paid by C. D., of, &c., on the passing of this surrender (the receipt whereof the said A. B. hereby acknowledges), they the said A. B. and M. B., his wife (the said M. B. joining herein, for the purpose of passing all her right or title to freebench, and being first examined by the said steward, apart from her said husband, according to the custom of the said manor), did surrender into the hands of the lord of the said manor, by the hands and acceptance of the said steward, by the rod, according to the custom of the said manor, all that [*parcels*] (all which hereditaments are holden of the said manor of X., and are situate at W., in the parish of V., in the county of Middlesex), together with the easements and appurtenances to the said hereditaments belonging, to the use of the said C. D., his heirs and assigns for ever, at the will of the lord, according to the custom of the said manor, by and under the suits and services, rents, fines, and heriots therefor due and of right accustomed.

Taken, together with the separate examination of the said M. B., the day and year aforesaid, by me, Y. Z., *Steward.*

Surrender of Copyholds to the Trustees of a Settlement.

Form 99.

Manor of X. } Be it remembered, that out of Court on the [*date*], A. B., of, &c., a copyhold tenant of this manor, came before T. W., steward of the said manor, and in pursuance of a covenant contained in a certain indenture dated, &c., made between, &c. (being a settlement executed

[1] A surrender cannot be so framed as to imply covenants for title under § 7 of the Conveyancing Act, 1881. If the surrender is not preceded by a deed of covenant to surrender in the form of Form 97, it should be followed by a deed containing covenants for title. See Form 100, p. 388.

Form 99. in contemplation of the marriage of the said A. B. with C. B.), did surrender into the hands of the lord of the said manor, by the hands and acceptance of the said steward, by the rod, according to the custom of the said manor, all [*parcels*] (which said hereditaments are holden of the manor of X., in the county of Y.), together with the easements and appurtenances to the said hereditaments belonging, or then or theretofore enjoyed therewith, to the use of the said E. F. and G. H., their heirs and assigns, at the will of the lord, according to the custom of the said manor, by and under the suits and services, rents, fines, and heriots therefor due and of right accustomed [upon the trusts and subject to the provisions contained in and declared by the said indenture of the [*date*]].[1]

Form 100. DEED OF COVENANTS FOR TITLE TO ACCOMPANY SURRENDER OF COPYHOLDS.

Parties. 1. THIS INDENTURE, made, &c., between A. B., of, &c., of the one part, and C. D., of, &c., of the other part.

Agreement for sale, &c. 2. WHEREAS the said A. B. agreed with the said C. D. for the sale to him of the hereditaments hereinafter described, with their appurtenances and the inheritance thereof in possession, according to the custom of the manor of which the same are holden free from incumbrances, except the rents, fines, heriots, suits, and services therefor due and of right accustomed, for the sum of £700, and upon the treaty for the said sale it was agreed that the said A. B. should enter into such covenants as are hereinafter contained.

Surrender. 3. AND WHEREAS, in pursuance of the said agreement, the said A. B. and M. B., his wife, did out of Court, immediately before the execution hereof, surrender into the hands of the lord of the manor of X. by his steward, and according to the custom of the said manor, all that [*parcels from surrender*], (all which said hereditaments and premises are holden of the manor of X., in the county of Middlesex, and are situate at W., in the parish of V., in the said county), together with the appurtenances, to the use of the said C. D., his heirs and assigns, according to the custom

[1] The steward may object to the words in brackets.

of the said manor, and by and under the suits and services, rents, fines, and heriots therefor due and of right accustomed. **Form 100.**

4. Now this Indenture witnesseth, that in consideration of the said sum of £700 paid to the said A. B. by the said C. D. on the execution of the said surrender, he, the said A. B., hereby covenants with the said C. D. that, notwithstanding anything by the said A. B., or any person through whom he derives title otherwise than by way of purchase for value, done, omitted, or knowingly suffered, the said A. B. and M. B. had, at the time of making the said surrender, or one of them had, full power to surrender the said hereditaments to the use of the said C. D., his heirs and assigns, according to the custom of the said manor free from incumbrances, but under and subject to the rents, fines, heriots, suits, and services therefor due and of right accustomed, and that the same premises may henceforth be quietly enjoyed by the said C. D., his heirs and assigns, free from interruptions and incumbrances by the said A. B. and M. B., or either of them, or by any person claiming through or in trust for them or either of them. And that the said A. B. and M. B., and every such person as aforesaid, will at all times, upon every reasonable request, by and at the cost of the said C. D., his heirs or assigns, do and execute such acts and assurances for more perfectly surrendering and assuring the said hereditaments to the use aforesaid, as by him or them shall be reasonably required. Testatum.

In witness, &c.

Conveyance of Freeholds and Covenant to Surrender Copyholds. **Form 101.**

1. This Indenture, made, &c., between A. B., of, &c., of the one part, and C. D., of, &c., of the other part. Parties.

2. Witnesseth that, in consideration of the sum of £800, paid by C. D. to A. B. (the receipt whereof he hereby acknowledges), A. B., as beneficial owner, hereby conveys to C. D. all, &c. [*parcels of freehold land*], together with all easements and appurtenances to the said hereditaments in fact, or by reputation, belonging, or now or heretofore used Conveyance.

Form 101. or enjoyed therewith. To hold to and to the use of C. D., in fee simple.

Covenant to surrender.

3. And this Indenture also witnesseth, that, in consideration of the sum of £50 paid by C. D. to A. B. (the receipt whereof he hereby acknowledges), A.B., as beneficial owner, hereby covenants with C. D. and his heirs, that A. B. will forthwith surrender into the hands of the lord of the manor of O., in the county of Y., all, &c. [*parcels of copyhold land*], [to which hereditaments the said A. B. was on the [*date*], admitted tenant in fee simple in possession according to the custom of the said manor], to the use of C. D., his heirs and assigns, at the will of the lord, according to the custom of the said manor, subject to the rents, suits, and services therefor due and of right accustomed.

In witness, &c.

Form 102. Deed of Enfranchisement of Copyholds with Grant of Rights of Common.

Parties.

1. This Indenture, made, &c., between A. B., of, &c., lord of the manor of X., of the one part, and C. D., of, &c., a copyhold tenant of the said manor, of the other part.

Recital of lord's title.

2. Whereas the said A. B. is seised of the said manor of X., for an estate of inheritance in fee simple in possession free from incumbrances.

Recital of tenant's title.

3. And whereas the said C. D. is seised to him and his heirs according to the custom of the said manor, of the hereditaments hereinafter described, being part of the copyhold hereditaments of the said manor.

Recital of agreement.

4. And whereas the said C. D. has agreed with the said A. B. for the enfranchisement of the said hereditaments for the sum of £90.

Testatum.

5. Now this Indenture witnesseth, that, in consideration of £90 paid to the said A. B. by the said C. D. on the execution hereof (the receipt whereof the said A. B. hereby acknowledges), the said A. B. hereby grants unto the said C. D. and his heirs,

Parcels.

6. All [*parcels*], together with [*general words*].[1]

Habendum.

7. To hold the said hereditaments unto and to the use of the said C. D., his heirs and assigns, freed, enfranchised, and

[1] If mines and minerals are intended to pass, they must be expressly mentioned.

discharged from all and all manner of customary and other rents, fines, heriots, fealty, suit of court, forfeitures, duties, services, or customs whatsoever, which, according to the custom of the said manor of X., the said hereditaments are or have been subject or liable to or charged with, or which would, but for this indenture, be payable, or to be done and performed in respect of the same hereditaments or any of them, or any part thereof. Form 102.

[8. And this Indenture also witnesseth,[1] that for the considerations aforesaid, and in order to preserve to the said C. D., his heirs and assigns, all such rights of common in, upon, and over the waste lands of the said manor of X. as the said C. D., or any of his predecessors in title, have at any time heretofore used or enjoyed as belonging or appurtenant to the hereditaments and premises hereinbefore described, notwithstanding the enfranchisement of the same respective premises, the said A. B. hereby grants unto the said C. D., his heirs and assigns, all such commonage and right of common of what nature or kind soever, in, upon, or over all or any of the wastes, commons, and commonable lands, of or belonging to the said manor of X. as the said C. D., immediately before the execution of this indenture, or as any of his predecessors in title, have at any time heretofore held, possessed, or enjoyed in respect of and as appurtenant or belonging to the said hereditaments hereinbefore assured, and the freehold and inheritance of all such commonable rights as aforesaid, in as large, ample, and beneficial a manner to all intents and purposes as the said C. D., or any of his said predecessors, have heretofore used and exercised all or any of the said rights or privileges, or as he or his customary heirs could or might have used and exercised the same if this indenture had not been executed.] [*Add covenants by the lord of the manor for title and acknowledgment of right to production and undertaking for safe custody of title deeds as in a conveyance of freeholds.*] Grant of rights of common.

In witness, &c.

[1] If there are no common rights in the manor, or if it is not intended to reserve common rights to the copyholder after the enfranchisement, the grant of common rights will, of course, be omitted.

Form 103. ASSIGNMENT OF LEASEHOLDS BY INDEPENDENT DEED.

Parties. 1. THIS INDENTURE, made, &c., between A. B., of, &c., of the one part, and C. D., of, &c., of the other part.

Lease. 2. WHEREAS by an indenture dated, &c., and made between X. Y., of the one part, and T. W., of the other part, ALL [*here copy the parcels from the lease verbatim*], with their appurtenances, were demised to the said T. W., his executors, administrators, and assigns, from [Michaelmas-day then last] for the term of [ninety-nine] years, at the yearly rent of £[150] and subject to the lessee's covenants and conditions therein contained.[1]

Subsequent devolution. 3. AND WHEREAS by virtue of divers mesne assignments and acts in the law, and ultimately by an indenture dated, &c., and made between S. Z., of the one part, and A. B., of the other part, the premises comprised in and demised by the said indenture of lease became and are now vested in A. B. for the residue of the said term.[2]

Sale. 4. AND WHEREAS A. B. has agreed with C. D. for the sale

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[1] This is a *general* recital of a lease. When it is important to show who is the lessor, a *particular* recital must be used as follows:—

Lease. 2A. WHEREAS by an indenture, dated, &c., and made between X. Y., of the one part, and T. W., of the other part, the said X. Y. demised all [*copy the parcels verbatim from the lease*], with their rights, easements, and appurtenances to the said T. W., his executors, administrators, and assigns, for—— years from the [*date*], subject to the payment of the yearly rent of £——, and to the performance of the lessee's covenants and conditions therein contained.

[2] If there has only been one *mesne* assignment, recite it as follows:—

Assignment of lease. 3A. AND WHEREAS by an indenture dated, &c., and made between the said T. W., of the one part, and A. B., of the other part, the premises comprised in and demised by the said indenture of lease, were assigned to A. B. for all the residue of the said term of —— years created by the said indenture of lease, subject to the payment of the rent reserved by and to the performance of the lessee's covenants and conditions contained in the same indenture.

to him of the said premises for the residue of the said term at the price of £500.[1] **Form 103.**

5. Now this Indenture witnesseth, that in consideration of £500 now paid to A. B. by C. D. (the receipt whereof A. B. hereby acknowledges) A. B. as beneficial owner hereby assigns to C. D. Testatum.

6. All the premises comprised in and demised by the hereinbefore-recited lease. Parcels.

7. To hold the same unto C. D. for the residue of the said term, subject to the payment of the rent and the performance of the lessee's covenants and conditions therein reserved and contained respectively. Habendum.

8. And C. D. covenants with A. B., that C. D. will henceforth pay and perform the rent reserved by and lessee's covenants and conditions contained in the said lease; and indemnify A. B. against all consequences of the non-payment and non-performance thereof respectively. Covenant to pay rent, &c.

In witness, &c.

Assignment of Leaseholds by Indorsement. **Form 104.**

1. This Indenture, made, &c., between the within-named A. B., of the one part, and C. D., of, &c., of the other part, Parties.

2. Witnesseth, that, in consideration of £200 now paid by C. D. to A. B. (the receipt whereof A. B., as beneficial owner, hereby acknowledges), A. B. hereby assigns to C. D., Testatum.

3. All the premises comprised in and demised by the within-written indenture, Parcels.

4. To hold the same unto C. D. [his executors, administrators, and assigns], henceforth for the residue of the term of [ninety-nine] years by the within-written indenture Habendum.

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[1] The following longer form is often used:—

4A. And whereas the said A. B. has agreed with the said C. D. for the sale to him of the premises demised by the said indenture of lease, subject to the rent reserved by and to the observance and performance of the lessee's covenants and the conditions contained in the said indenture, for the sum of £——, Sale of leaseholds.

Form 104.

demised, subject to the rent and lessee's covenants and conditions therein contained.

Covenant to pay rent.

5. And C. D. hereby covenants with A. B. that C. D. will henceforth pay the rent reserved by and perform the lessee's covenants and conditions contained in the within-written indenture, and indemnify A. B. against all consequences of the non-payment and non-performance of the same respectively.

In witness, &c.

Form 105.

Assignment of Leaseholds by Mortgagor and Mortgagee.

Parties.

1. This Indenture, made, &c., between A. B., of, &c., of the first part, C. D., of, &c., of the second part, and E. F., of, &c., of the third part.

Recital of lease.

2. Whereas by an indenture dated, &c. [*recite lease for ninety-nine years to A. B. as in Form* 103, *ante, setting out parcels verbatim*].

Recital of mortgage by demise.

3. And whereas by an indenture dated, &c., and made between the said A. B., of the one part, and the said C. D., of the other part, the said A. B. demised the premises comprised in the said indenture of lease [together with the two several messuages then built thereon, and which are now known as Nos. 2 and 4, X. Street aforesaid], to the said C. D., his executors, administrators, and assigns, for the then residue of the said term of ninety-nine years (less the last day thereof), subject to a proviso for surrender thereof on payment by the said A. B. to the said C. D. of £500 with interest as therein mentioned.

Recital of agreement for sale.

4. And whereas the said A. B. has agreed with the said E. F. for the sale to him of the premises hereinbefore described for the residue of the said term for the sum of £800.

State of debt.

5. And whereas [*insert appropriate recitals showing* £550 *due to C. D. for principal and interest, and agreement as to payment of purchase-money as in Form* 80, p. 361].

Testatum.

6. Now this Indenture witnesseth, that in consideration of £250 to the said A. B., and of £550 to the said C. D. now paid by the said E. F. (the receipt of which several sums of £250 and £550, making together £800, the said

A. B. and C. D. hereby respectively acknowledge), the said A. B., as beneficial owner, hereby assigns, and the said C. D., as mortgagee, at the request of the said A. B., hereby surrenders and releases unto the said E. F., **Form 105.**

7. ALL and singular the premises comprised in and demised by the said indenture of lease, together with the said two messuages now built thereon. Parcels.

8. To hold the same unto the said E. F. and his assigns, for the residue of the said term of ninety-nine years, subject to the rent reserved by, and the lessee's covenants and conditions contained, in the said indenture of lease, but freed from all moneys secured by and all claims under the said indenture of mortgage: Habendum

9. AND the said E. F. hereby covenants with the said A. B., that he [*covenant to pay rent and perform covenants, as in Form* 104, p. 394].

IN WITNESS, &c.

ASSIGNMENT OF LEASEHOLDS BY A MORTGAGEE UNDER EXPRESS POWER OF SALE, WHERE THE MORTGAGE IS BY ASSIGNMENT. **Form 106.**

1. THIS INDENTURE, made, &c., between A. B., of, &c., of the one part, and C. D., of, &c., of the other part. Parties.

2. WHEREAS by an indenture dated the, &c. [*recite lease to* X., *as in Form* 103, p. 392.] Recital of lease.

3. AND WHEREAS by an indenture, dated, &c., and made between the said X., of the one part, and the said A. B., of the other part, the said X. assigned the premises comprised in the said indenture of lease to the said A. B. for the residue of the said term by way of mortgage for securing £500 and interest on the [*date*] as therein mentioned. [And by the same indenture it was provided that if default should be made in the payment of the said sum of £500 on the [*date*], it should be lawful for the said A. B., at any time thereafter, without any further consent on the part of the said X., to sell the premises thereby assigned, or any part thereof, either together or in parcels, and either by public auction or private contract, and subject to such conditions of sale, and generally upon such terms as the said A. B. should deem fit, and upon such sale to assign the Recital of mortgage by assignment.

Form 106.

premises sold to the purchaser or purchasers, or as he or they might require. And by the said indenture it was also declared that every receipt which should be given by the said A. B. for any moneys to be derived from any such sale or sales, or otherwise under the same indenture, should be an effectual discharge to the person or persons to whom the same should be given.][1]

Recital of further charge.

4. And whereas, by a memorandum, dated, &c., and indorsed on the last-recited indenture, the said X. acknowledged to have received from the said A. B., on the security created by the said indenture, the further sum of £200.[2]

State of debt.

5. And whereas there is now due to the said A. B., on the security of the said indenture and memorandum, the sum of £700, together with an arrear of interest thereon.

6. And whereas the said A. B. has agreed with the said C. D. for the sale to him of the premises comprised in the said indenture of lease, for the residue of the said term for £750.

Testatum.

7. Now this Indenture witnesseth, that in consideration of £750 paid by the said C. D. to the said A. B. (the receipt whereof is hereby acknowledged), the said A. B. [in exercise of the hereinbefore-recited power of sale, and of every

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[1] If the sale is under the statutory power conferred by the Conveyancing Act, 1881, the words in brackets will be omitted.

[2] Compare the following recitals of further charges:—

Further charge.

4A. And whereas by an indenture, dated, &c., and made between the said X., of the one part, and the said A. B., of the other part, in consideration of the further sum of £200 then lent by the said A. B. to the said X., the hereditaments comprised in the last-recited indenture were charged as well with the payment of the said sum of £500 as of the sum of £200, with interest for the same sums respectively.

Further charge by indorsement.

4B. And whereas by a deed poll, dated, &c., under the hand and seal of the said X., indorsed on the hereinbefore-recited indenture of mortgage, the hereditaments comprised in the said indenture of mortgage were charged with the payment of the further sum of £200 with interest to the said A. B. [his executors, administrators, or assigns.]

other power (if any) enabling him in this behalf][1] as mortgagee, hereby assigns unto the said C. D. Form 106.

8. All the premises comprised in and demised by the hereinbefore-recited indenture of lease. Parcels.

9. To hold the same unto the said C. D. and his assigns, for the residue of the said term of ninety-nine years granted by the hereinbefore-recited indenture of lease, freed from all claims and demands in respect of the moneys secured by and from all right or equity of redemption, and all other claims under the hereinbefore-recited indenture of the [*date*], but subject to the rent reserved by and the lessee's covenants and conditions contained in the said indenture of lease. Habendum.

10. And the said C. D. hereby covenants with the said A. B. [covenant to pay rent, &c., as in Form 104, p. 394]. Covenant to pay rent, &c.

Assignment of Leaseholds by Mortgagee under Statutory Power where Mortgage was by Demise. Form 107.

1. This Indenture, made [*date*], between A. B., of, &c., of the one part, and C. D., of, &c., of the other part. Parties.

2. Whereas by an indenture of lease dated, &c., and made between W. X., of the one part, and Y. Z., of the other part [*recite lease for ninety-nine years, as in Form* 103, *p.* 392]. Recital of lease.

3. And whereas by an indenture dated, &c., and made between the said Y. Z., of the one part, and the said A. B., of the other part, the said Y. Z. demised the premises comprised in the said indenture of lease to the said A. B. for all the residue of the said term of ninety-nine years (except the last ten days thereof) by way of mortgage for securing the sum of £—— and interest on the [*date*]. And the said Y. Z. thereby declared that he would thenceforth stand possessed of the nominal reversion of ten days thereby reserved to him in trust for the said A. B., his executors, administrators, and assigns. And he thereby appointed the Recital of mortgage by demise.

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[1] If the sale is under the statutory power, substitute for the words in brackets the following:—

In exercise of his statutory power of sale and of every other power (if any) enabling him in this behalf.

Form 107.

said A. B. his attorney to assign the said nominal reversion to the said A. B., his executors, administrators, and assigns, or as he or they should think fit.[1]

Default and sale.

4. And whereas [the said Y. Z. failed to pay the said sum of £—— on the said [*date*], and] the said A. B. has agreed with the said C. D. for the sale to him of the premises comprised in the said indenture of lease for all the residue of the said term of ninety-nine years for £——.

Testatum.

5. Now this Indenture witnesseth, that in pursuance of the said agreement, and in consideration of £—— now paid by the said C. D. to the said A. B. (the receipt whereof is hereby acknowledged), the said A. B., as mortgagee, and in exercise of the powers for this purpose given to him by the Conveyancing Act, 1881, and the said indenture of mortgage, and of every other power (if any) enabling him in this behalf, hereby assigns unto the said C. D.

Parcels.

6. All and singular the premises comprised in and demised

---

[1] If there has been a transfer of the mortgage, the following recital may be adapted, the original mortgage being to S. T. instead of to A. B.:—

Transfer of mortgage.

3A. And whereas by an indenture, dated, &c., and made between the said S. T., of the first part, the said A. B., of the second part, in consideration of the sum of £—— paid to the said S. T. by the said A. B., the said S. T. assigned the said principal sum of £—— secured by the hereinbefore-recited indenture of mortgage, to the said A. B., his executors, administrators and assigns: [*If the mortgage was of leaseholds proceed thus*] and the said S. T. thereby assigned all the premises comprised in and demised by the hereinbefore-recited indenture of lease, to the said A. B., his executors, administrators, and assigns, for the residue of the said term of —— years (except the last ten days thereof), subject to such equity of redemption as was then subsisting in the same premises under the said indenture of mortgage: [*If the mortgage was in fee simple, substitute this clause for the last*] [and the said S. T. thereby assured, and all the hereditaments comprised in the said indenture of mortgage to the use of the said A. B., his heirs and assigns, subject to such equity of redemption as was then subsisting in the same by virtue of the said indenture of mortgage].

by the first hereinbefore-recited indenture of lease, with the appurtenances thereto belonging. **Form 107.**

7. To HOLD the same unto the said C. D., his executors, administrators, and assigns, for all the residue of the said term of ninety-nine years created by the said indenture of lease,[1] subject to the rent reserved by, and the lessee's covenants and conditions contained in, the said indenture of lease, but freed and discharged from all right or equity of redemption, and all claims and demands under or by virtue of the said indenture of mortgage. Habendum.

ASSIGNMENT OF LEASEHOLDS TO BE ENDORSED ON A MORTGAGE PURSUANT TO COVENANT FOR FURTHER ASSURANCE.[2] **Form 108.**

1. THIS INDENTURE, made, &c., between A. B., of, &c. (hereinafter called "the mortgagor"), of the first part, and C. D., of, &c. (hereinafter called "the mortgagee"), of the second part. Parties.

2. WHEREAS the within-recited indenture of assignment to the mortgagor (the date of which is omitted, but which is in fact dated the 6th of March, 1875) of the hereditaments comprised in the within-recited indenture of lease, dated [*date*], and thereby demised to the within-named X. Y., had not been executed at the date of the execution of the within-written indenture, and therefore it is considered that no legal estate in the hereditaments demised by the said indenture of Recital as to assignment.

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[1] If there had not been a power of attorney enabling the mortgagee to convey the reversion of ten days, the habendum would be:—

"For all the residue of the said term of ninety-nine years except the last ten days thereof and for all the estate and interest of the said A. B., or which he can assure in the reversionary term of ninety-nine years, created by the said indenture of lease."

[2] A. B. mortgaged leaseholds in Surrey to C. D. by indenture dated 11th September, 1874, to secure £8,000 and further advances. A. B. had purchased these leaseholds from X. Y., and they had all been assigned to him before the 11th of September, 1874, except the portion comprised in this deed, about the title of which there had been some difficulty, and the assignment by X. Y. to A. B. of this portion was not executed till 1875, though the assignment had been recited in the mortgage without a date.

Form 108.

lease passed to the mortgagee by virtue of the within-written indenture.

Recital of execution thereof.

3. And whereas the said indenture of assignment as within-recited has been duly executed since the execution of the within-written indenture, namely on the 6th of March, 1875, and the hereditaments comprised in the said indenture are now vested in the mortgagor for the unexpired residue of the within-mentioned term of ninety-nine years subject as in the within-written indenture is mentioned.

Recital of agreement to further assure.

4. And whereas the mortgagor, at the request of the mortgagee, and in pursuance of the covenant for further assurance in the within-written indenture contained, has agreed to execute such assurance to him of the said hereditaments comprised in the said indenture of lease as is hereinafter contained.

Testatum.

5. Now this Indenture witnesseth, that in pursuance of the said agreement, and for the considerations in the within-written indenture mentioned, the mortgagor, as beneficial owner, hereby demises unto the mortgagee,

Parcels.

6. All that piece of land with the messuages, cottages, and outbuildings, hereditaments, rights, and easements, appurtenances, and premises comprised in and demised by the said indenture of lease of the [*date*].

Habendum.

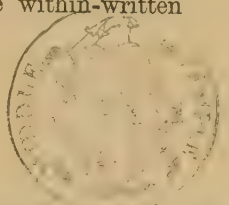
7. To hold all and singular the said hereditaments unto the mortgagee and his assigns, for the residue now to come of the said term of ninety-nine years created by the said indenture of lease of the [*date*], except the last two days thereof, subject to the proviso for redemption thereof in the within-written indenture contained. To the intent that the hereditaments and premises hereby demised may form part of the security for the within-mentioned sum of £——, and further advances in the same manner as if the said indenture of assignment of the 6th of March, 1875, had been duly executed before the execution of the within-written indenture.

Covenant by mortgagor.

8. And the mortgagor hereby covenants with the mortgagee that all the covenants for title and for payment of rent and observance of lessees' covenants, and all other the covenants, and all the powers (including the power of sale and powers ancillary thereto), provisions, trusts, declarations, agreements, and stipulations in the within-written indenture contained with regard to the hereditaments thereby assured

shall extend and be applicable to the hereditaments and premises hereby demised in as full a manner in all respects as if the said indenture of assignment of the 6th of March, 1875, had been duly executed before the 11th of September, 1874, and the hereditaments and premises hereby demised had been actually comprised in and demised by the within-written indenture as such security as aforesaid. Form 108.

In witness, &c.



Assignment of a Moiety of the Equity of Redemption of Leaseholds by one Mortgagor to his Co-Mortgagor. Form 109.

1. This Indenture, made, &c., between A. B., of, &c., of the one part, and C. D., of, &c., of the other part, supplemental to the indentures of lease and mortgage specified in the schedule hereto. Parties.

2. Witnesseth that in consideration of £100 to the said A. B., paid by the said C. D. (the receipt whereof is hereby acknowledged), the said A. B., as beneficial owner, hereby assigns unto the said C. D. all that the undivided moiety, and all other (if any) the share of the said A. B., of, and in, Testatum.

3. All the hereditaments comprised in the said indenture of lease. Parcels.

4. To hold the same unto the said C. D. for all the residue of the term created by the said indenture of lease, subject (in common with the other moiety of the said hereditaments) to the rent by the said indenture of lease reserved, and to the lessee's covenants and conditions therein contained, and also subject (in common as aforesaid) to the said indenture of mortgage and to the payment of the moneys intended to be thereby secured. Habendum.

And the said C. D. hereby covenants with the said A. B. that the said C. D. will pay all principal and interest moneys secured by the said indenture of mortgage, and will henceforth pay, and perform, and observe the rent reserved by, and the lessee's covenants and conditions contained in the said indenture of lease, and indemnify the said A. B. against all consequences of non-payment of the said principal, interest,

Form 109. and rent, and of non-performance or non-observance of the said covenants and conditions respectively.

In witness, &c.

The Schedule above referred to.

Date.	Parties.	Parts.	Description.
1891, Jan. 23.	John Jones	1	Lease for 99 years from 25 Dec., 1890, at annual rent of £10.
	A. B. and C. D.	2	
1891, Feb. 3.	A. B. and C. D.	1	Mortgage of the above lease to secure £1,000 and interest.
	William Thompson ...	2	

Form 110. Assignment of a Policy of Assurance by a Trustee in Bankruptcy.[1]

Parties. 1. This Indenture, made [*date*], between A. B., of, &c., of the one part, and C. D., of, &c., of the other part.

Recital of policy. 2. Whereas by a policy of assurance, dated, &c., and numbered 317965, and issued by the X. Assurance Company, Limited, to Y. Z., the said company covenanted to pay the sum of £800 to the executors, administrators, or assigns of the said Y. Z., within one calendar month after proof of his death, subject to the annual premium of £——.[1]

Bankruptcy. 3. And whereas the said Y. Z. was adjudicated a bankrupt on [*date*], and the said A. B. was duly appointed trustee in the said bankruptcy.

Agreement for sale. 4. And whereas the said A. B. has agreed with the said C. D. for the sale to him of the said policy for the sum of £200.

Testatum. 5. Now this Indenture witnesseth, that in pursuance of the said agreement, and in consideration of £200 now paid by the said C. D. to the said A. B. (the receipt whereof the said A. B. hereby acknowledges) the said A. B., as trustee, hereby assigns unto the said C. D.

Parcels. 6. All that the hereinbefore-recited policy of assurance

[1] In this case the policy was purchased from the trustee in bankruptcy of the person assured for the benefit of his wife.

on the life of the said Y. Z., and all moneys thereby assured, or to become payable thereunder [and the full benefit thereof]. Form 110.

7. To HOLD the same unto the said C. D. absolutely. Habendum.

IN WITNESS, &c.[1]

ASSIGNMENT OF REVERSIONARY INTEREST IN A SUM OF STOCK. Form 111.

1. THIS INDENTURE, made, &c., between A. B., of, &c., widow, of the one part, and C. D., of, &c., of the other part. Parties.

2. WHEREAS E. F., late of, &c., deceased (hereinafter called "the testator"), duly made his will, dated, &c., and thereby bequeathed unto G. H. and K. L. (whom he appointed executors and trustees thereof) his personal estate upon certain trusts, being in effect trusts for payment of debts and funeral expenses, and subject thereto for the benefit of his wife, M. F., during widowhood, and after the decease or second marriage of his said wife he directed his trustees to sell such part of his residuary personal estate as should not have been previously sold, and he declared that his trustees should stand possessed of the moneys to be produced from such sales, and also the stocks or funds in which any part of his residuary personal estate, if sold during the widowhood of his said wife, should be invested, and all other his trust moneys, upon trust to pay, assign, and transfer the same unto the three children of his said wife by her former husband in the proportions following, (viz.), three equal seventh parts thereof to Y. Z., three other equal seventh parts thereof to W. X., for her separate use, and the remaining one equal seventh part thereof to the said A. B. for her Recital of will.

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[1] The following declaration was indorsed on this assignment:—

I DECLARE that I hold the above-mentioned policy and all moneys to be received by me thereunder in trust to retain thereout the above sum of £200 and all sums which I may pay for premiums thereon, and all costs incurred by me in relation thereto, including the costs of this assignment, and subject thereto, in trust for W. Z., the wife of the above-named Y. Z., absolutely.

WITNESS, E. F., of, &c. C. D.

Form 111.

separate use; or in case of her death during the widowhood of his said wife, for such person or persons, and in such shares and proportions, as the said A. B. should, notwithstanding coverture, by deed or will appoint.[1]

Recital of death and probate.

3. And whereas the testator died on the [*date*], and his said will was duly proved by the said executors in the principal Probate Registry of the High Court of Justice on [*date*].

Recital as to residuary estate.

4. And whereas the testator's residuary personal estate has been sold and called in by the said G. H. and K. L., and the proceeds thereof, after payment of his debts, and funeral and testamentary expenses, have been invested, and the same now consist of the sum of £1,768 New Consols, standing in the names of the said G. H. and K. L. in the books of the Governor and Company of the Bank of England.

Recital of age of tenant for life.

5. And whereas the said M. F. (the widow of the testator) is still living, and is of the age of seventy years or thereabouts.

Recital of sale by auction.

6. And whereas the said A. B. caused the one-seventh part or share to which she is entitled in reversion expectant on the death of the said M. F., in the said sum of £1,768 New Consols, to be offered for sale by public auction at the Auction Mart in the City of London, on the [*date*]; and at the said sale the said C. D. was the highest bidder for, and declared to be the purchaser of, the same for the sum of £——.[2]

Testatum.

7. Now this Indenture witnesseth, that in order to effectuate the said sale, and in consideration of £—— to the said A. B. now paid by the said C. D. (the receipt of

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[1] Where there has been a change of executors recite as follows:—

Codicil changing executor.

2A. And whereas the testator made a codicil dated, &c., to his said will, and thereby revoked the appointment of the said G. H. as executor and trustee of his said will, and appointed the said M. N. an executor and trustee thereof in the place of the said G. H.

[2] Unless there is some special reason for it, a sale by auction is seldom recited in this form: it is usually sufficient to recite it as an ordinary contract for sale; but in the case of a reversion, the fact that it was purchased at a sale by public auction may properly appear in the assignment in order to prevent any future question whether the sale was at an undervalue.

which the said A. B. hereby acknowledges), she, the said A. B., as beneficial owner, hereby assigns, appoints, and confirms unto the said C. D. **Form 111.**

8. ALL that the one-seventh part or share, and other the part, share, and interest to which she is entitled in reversion expectant upon the decease of the said M. F., of and in the said sum of £1,768 New Consols, and of and in all and singular the stocks, funds, or securities in or upon which the same or any part thereof may from time to time be invested. Parcels.

9. To have, receive, and take the said part or share hereby assured of and in the said sum of £1,768 New Consols, and other the moneys and premises hereinbefore mentioned, unto and by the said C. D. and his assigns. Habendum.

IN WITNESS, &c.[1]

ASSIGNMENT OF A REVERSIONARY INTEREST IN RESIDUARY ESTATE AND A POLICY OF ASSURANCE BY MORTGAGEE UNDER POWER OF SALE. **Form 112.**

1. THIS INDENTURE, made, &c., between A. B., of, &c., of the one part, and C. D., of, &c., of the other part. Parties.

2. WHEREAS [*recital of will of Z., giving one-fifth of residuary estate to each of sons subject to life estate of Y.*].[2] Recital of will.

3. AND WHEREAS [*recite death and probate*].[3] Recital of death and probate.

4. AND WHEREAS the testator had five children who survived him or died in his lifetime, leaving issue, and X., hereinafter mentioned, is one of such children. Recitals as to family.

5. AND WHEREAS the said Y. is still living.

6. AND WHEREAS by a policy of assurance under the hands of three of the directors of the Royal Assurance Corporation, dated, &c., and numbered, &c., the sum of £500 is assured to be paid to the executors, administrators, or assigns of the said X., within three calendar months after proof of his death, subject to the annual premium of £——. Recital of policy of assurance.

[1] Notice of the deed should be given to the trustees immediately after its execution. Such notice will complete the transfer of the legal estate to the purchaser so as to render a power of attorney unnecessary. A notice in lieu of *distringas* should also be placed on the stock. See form of Affidavit, p. 209, and of Notice to the Bank, p. 494.

[2] See p. 403, *ante*.

[3] See p. 404, *ante*.

Form 112.

Recital of mortgage.

7. And whereas by an indenture of mortgage, dated, &c., and made between the said X., of the one part, and the said A. B., of the other part, all that one equal fifth part or share, or other the part share, estate, and interest of the said X., under or by virtue of the will of the said Z., deceased (expectant on the decease of the said Y.), of and in all and singular the residuary personal estate and effects of the said Z., deceased, and the proceeds thereof, and of and in the stocks, funds, and securities by which the same or any part thereof might be represented. And all the hereinbefore recited policy of assurance and the said sum of £500 thereby assured, and all other moneys to become payable thereunder by way of bonus or otherwise to the said A. B. by way of mortgage to secure £400 and interest.[1]

Recital of sale.

8. And whereas the said A. B. has agreed with the said C. D. for the sale to him of the premises comprised in the said indenture of mortgage for the said sum of £450.

Testatum.

9. Now this Indenture witnesseth, that in pursuance of the said agreement, and in consideration of the sum of £450 upon the execution hereof paid by the said C. D. to the said A. B. (the receipt, &c.), the said A. B., as mortgagee, in exercise of the power for this purpose given to him by the Conveyancing Act, 1881, and of every other power (if any) enabling him in this behalf, hereby assigns unto the said C. D.

Parcels.

10. All and singular the premises comprised in and described by the hereinbefore-recited indenture of mortgage, and the full benefit thereof.

Habendum.

11. To hold the same unto the said C. D., Freed and discharged from all right and equity of redemption, and all claims and demands under the hereinbefore-recited indenture of mortgage, but subject as to the said residuary estate to the life interest of the said Y. therein.

In witness, &c.

[1] If the mortgage contains a power of sale, it will be set out here and referred to in the *testatum* instead of the statutory powers.

ASSIGNMENT OF THE GOODWILL OF THE BUSINESS OF A CLOCK AND WATCH MAKER, AND THE CLOCK WINDING CONNECTED THEREWITH. **Form 113.**

1. THIS INDENTURE, made the, &c., between A. B., of, &c., watchmaker, of the one part, and C. D., of, &c., watchmaker, of the other part. Parties.

2. WHEREAS the said A. B. has for some time past carried on the business of a clock and watch maker, at No. 89, X. Street, aforesaid, and is now employed in winding the clocks of the several persons named in the schedule hereto, for the yearly remunerations set opposite to their respective names in the same schedule. Recital as to business.

3. AND WHEREAS the said A. B. has agreed with the said C. D. for the sale to him of the goodwill of the said business of a clock and watch maker, and the clock winding connected therewith, for the sum of £——. Recital of sale.

4. NOW THIS INDENTURE WITNESSETH, that in consideration of £—— now paid by the said C. D. to said A. B. (the receipt whereof the said A. B. hereby acknowledges), the said A. B., as beneficial owner, hereby assigns unto the said C. D. Testatum.

5. ALL that the goodwill of the said business of a clock and watch maker, as carried on by the said A. B. at No. 89, X. Street, aforesaid, together with the clock winding connected therewith, expressly including the winding of the clocks of the several persons whose names appear in the schedule hereto, and all the interest of the said A. B. therein. Parcels.

6. TO HOLD the same unto the said C. D. absolutely. Habendum.

7. AND the said A. B. hereby covenants with the said C. D. that the said A. B. will not, within seven years from the date hereof, either alone or jointly with, or as agent, journeyman, or assistant, for any person or company, either directly or indirectly, or upon any account or pretence, set up, exercise, or carry on, or be concerned or employed or interested in carrying on the business of a clock or watch-maker, or clock winder, within ten miles as the crow flies from No. 89, X. Street, aforesaid, and will not do, or cause to be done, any wilful act or thing to the prejudice of the Covenant by vendor as to future business.

Form 113.

said business and premises hereby assigned, but, on the contrary, will to the utmost of his power endeavour to promote the interest of the said C. D. amongst the customers of the said A. B. and otherwise.

IN WITNESS, &c.

The SCHEDULE above referred to.

Form 114.

ASSIGNMENT OF BOOK DEBTS.

Parties.

1. THIS INDENTURE, made, &c., between A. B., of, &c., of the one part, and C. D., of, &c., of the other part.

Recital of title and sale.

2. WHEREAS the said A. B. has for some time carried on the business of [*specify it*] at X. aforesaid, and in the course of such business the several persons named in the Schedule hereto have become and are now indebted to him in the several sums of money set opposite to their respective names in such Schedule, and he has agreed with the said C. D. for the absolute sale to him of the same debts for the sum of £——.

Testatum.

3. NOW THIS INDENTURE WITNESSETH, that, in consideration of £—— to the said A. B. now paid by the said C. D. (the receipt whereof is hereby acknowledged), the said A. B. hereby assigns unto the said C. D. all and singular the debts and sums of money specified in the Schedule hereto, To have, receive, and take the said debts unto and by the said C. D. for his own absolute use and benefit.

Covenant by vendor.

4. AND the said A. B. hereby covenants with the said C. D. that the said several debts are now due and owing to him, and that he, his executors or administrators, will at all times, at the request and cost of the said C. D., his executors, administrators, and assigns, do and execute all such further acts and assurances for more effectually assuring the said several debts unto the said C. D., his executors, administrators, and assigns, and enabling him or them to recover and receive the same respectively as by him or them shall be reasonably required.[1]

IN WITNESS, &c.

[1] Before the Judicature Act, 1873, came into operation it would have been necessary for A. B. to give C. D. a power of attorney to sue in his name, and for C. D. to covenant to indemnify A. B. against

The SCHEDULE above referred to. **Form 114.**

Name of Debtor.	Amount of Debt.	Name of Debtor.	Amount of Debt.

costs, &c., in respect of any action brought in his name. But now a simple notice to each of the scheduled debtors renders these clauses unnecessary, and they are therefore omitted.

DEEDS OF CONFIRMATION.

Form 115. CONFIRMATION OF A DEED TO WHICH A WIDOW OR A SPINSTER WAS A PARTY, BUT WHO MARRIED BEFORE 1883 AND BEFORE SHE EXECUTED IT.

Parties. 1. THIS INDENTURE, made [*date*], between A. B., of, &c. [*husband*], and C. B., his wife (formerly the within-named C. K.), of the one part, and the within-named E. F., of the other part.

Marriage. 2. WHEREAS after the engrossment of the within-written indenture, and before the execution thereof by the said C. B., the said C. B. intermarried with the said A. B.

Agreement. 3. AND WHEREAS the said A. B. and C. B. have agreed to execute this indenture for the purposes hereinafter appearing.

Testatum. 4. NOW THIS INDENTURE WITNESSETH, that in consideration of the premises, and in pursuance of the said agreement, the said A. B. and C. B. hereby ratify and confirm the within-written indenture, and the several covenants and provisions therein contained, to the intent that the within-written indenture shall, notwithstanding the said marriage, have the same effect as if the same had before such marriage, and with the privity and consent of the said A. B., been duly executed by the said C. B. by her then name of C. K.

IN WITNESS, &c.[1]

Form 116. DEED OF CONFIRMATION BY MARRIED WOMEN TO BE INDORSED ON ASSIGNMENT OF LEASEHOLDS WHICH, BY MISTAKE, HAD NOT BEEN ACKNOWLEDGED BY THEM.

Parties. 1. THIS INDENTURE, made [*date*], between A. B. and C. B. his wife of the first part, E. F. and G. F. his wife of the second part, and T. J. of the third part:

[1] If this deed relates to real estate or any interest therein belonging to the married lady, and not being her separate property or settled upon her for her separate use, the deed must be acknowledged by her. Such a deed would not be necessary in the case of a marriage after 1882.

Form 116.

2. WHEREAS the within-named W. X. duly made his will, dated, &c., and thereby (*inter alia*) devised and bequeathed all the real and personal estate of or to which he should at his decease be seised, possessed, or entitled, or over which he should have any general power of testamentary disposition (except estates vested in him by way of mortgage or upon any trust), Unto and to the use of his wife, V. X., and the said T. J. upon certain trusts in the said will mentioned, And he appointed his said wife and the said T. J. executrix and executor of his said will. Recital of will.

3. AND WHEREAS [*death of testator and probate*, see *recitals at* p. 404, *ante*]. Death of testator.

4. AND WHEREAS the said V. X. died on [*date*]. Death of widow.

5. AND WHEREAS the estate of the said W. X. is in course of administration by the High Court of Justice in an action in which M. N. and others are plaintiffs, and the said T. J. is defendant, and by an order made in the said action on [*date*] the hereditaments comprised in the within-written indenture were directed to be sold. Administration action.

6. AND WHEREAS the within-written indenture has not been acknowledged by the said C. B. and G. F., in pursuance of the Fines and Recoveries Abolition Act, and doubts are entertained whether the sale or arrangement purporting to be a sale recited in the within-written indenture is binding upon the said C. B. and G. F. or either of them. Assignment not acknowledged.

7. AND WHEREAS the said C. B. and G. F., with the concurrence of their respective husbands, and at the request of the said T. J., and for the purpose of enabling him to carry into effect the said order for sale, have agreed to execute and acknowledge this indenture by way of confirmation of the title of the said T. J. to the within-described hereditaments. Agreement for confirmation.

8. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the premises, the said C. B., with the concurrence of the said A. B., and the said G. F., with the concurrence of the said E. F., do and each of them doth hereby assign, release, and confirm, and the said A. B. and E. F. do hereby also release and confirm unto the said T. J. ALL the hereditaments in the within-written indenture described and expressed to be thereby assured. Testatum.

Form 116.

Habendum.

9. To HOLD (freed and discharged from all claim or equity to a settlement by the said C. B. and G. F., or either of them, and from all other claims or demands whatsoever by them or their respective husbands, or either of them) UNTO the said T. J. for all the residue now to come of the within-mentioned term of ninety-nine years. UPON the trusts upon which the same ought to be held under or by virtue of the said will of the said W. X. and the said order for sale.

Covenant against incumbrances.

10. AND each of them the said A. B., C. B., E. F., and G. F., so far as relates to his or her own acts and deeds (and as respects each of them the said C. B. and G. F. for the purpose of binding, so far as may be practicable, her separate estate in equity), doth hereby [*covenant against incumbrances, see p.* 351].

IN WITNESS, &c.[1]

[1] This deed must be separately acknowledged by C. B. and G. F.

DEEDS OF COVENANT.

Form 117.

Covenant to produce Deeds.[1]

1. This Indenture, made, &c., between A. B., of, &c., of the one part, and C. D., of, &c., of the other part. Parties.

2. Whereas [*recite conveyance to C. D.*]. Conveyance.

3. And whereas the several documents specified in the schedule hereto are in the possession of the said A. B., and relate to the title of the said messuage, farm and lands at X. aforesaid, and also of certain lands and hereditaments of the said A. B. situate at Y., in the county of Z. Custody of deeds.

4. Now this Indenture witnesseth, that in pursuance of an agreement in this behalf, the said A. B. hereby covenants with the said C. D., and his assigns, that the said A. B. and his assigns will at all times (unless prevented by fire or other inevitable accident), upon every reasonable request and at the cost of the said C. D., or his assigns, produce and show to the said C. D., or his assigns, or to such person or persons as he or they shall require, or to his or their counsel, agents, or solicitors, or to or before any court or courts of law or equity, or otherwise as occasion shall require, the several documents specified in the schedule hereto, or any of them; and will at the like request and cost at all times, unless prevented as aforesaid, make and deliver to the said C. D., or his assigns, fair, true, and attested copies, abstracts or extracts of or from such several documents, or any of them, and permit the same to be examined and verified with the originals either by the said C. D., or his assigns, or any other person or persons whom he or they shall appoint for that purpose: And that the said A. B. will in the meantime, unless prevented by fire or other inevitable accident, keep the same documents safe, whole, and uncancelled. Testatum.

[1] Notwithstanding the provisions of § 9 of the Conveyancing Act, 1881 (44 & 45 Vict. c. 41), as to the effect of an acknowledgment of right to production and an undertaking for safe custody of deeds, there are some few cases in which it will still be advisable to take a covenant in this form,

Form 117.

5. Provided always, that if the said A. B., his heirs or assigns, shall at any time hereafter sell and dispose of the said estate to which the said documents relate as aforesaid, or any part thereof, and shall procure the purchaser or purchasers thereof to enter into a like covenant to that which is hereinbefore contained with the said C. D., and his assigns, for the production and delivery of copies of the said documents in manner aforesaid, then the covenant hereinbefore contained for that purpose shall from thenceforth be void; and this indenture shall, at the request of the said A. B., his heirs, executors, or administrators, be delivered up to be cancelled.

In witness, &c.

Form 118.

Mutual Covenants by Purchasers of Building Land where it is intended the Buildings shall be Uniform.[1]

Parties.

1. This Indenture, made [*date*], between [*owner*], of the one part, and [*purchasers*] and the several other persons who shall at any time hereafter execute this indenture, of the other part.

Land laid out for building.

2. Whereas the said [*owner*] is seised in fee simple in possession of a piece of land containing —— acres, situate on the South Cliff, at Ramsgate, part of which he has laid out in separate lots or divisions for the erection of a row of houses thereon, intended to be called Nelson's Crescent, and the form of the front building line of the said houses is delineated in a ground plan drawn hereon, and contains, including the curve, 400 feet in front towards the south-east.

[1] The above is the form of the indenture in *Whatman* v. *Gibson*, 9 Sim. 196. An injunction will be granted to restrain a breach of the above deed; but in the different conveyances to the purchasers, this indenture must be plainly referred to, so as to fix the several sub-purchasers with notice of it, otherwise the Court will not interfere as against them. Nor will the Court grant an injunction against persons with notice who claim under a purchaser without notice of such a covenant. *Attorney-General* v. *Biphosphate Guano Co.*, 26 W. R. 533.

Form 118.

3. And whereas, in order to preserve some degree of similarity and uniformity of appearance in such intended row of houses, the said [*owner*] has determined that it shall be a general and indispensable condition of the sale of all land intended to form any part of such row, that the several proprietors of such land respectively for the time being shall observe and abide by the several stipulations and restrictions hereinafter contained in regard to the several houses to be erected thereon, and in all other particulars; and that the said [*owner*] and his heirs shall at all times observe the like stipulations and restrictions as to such of the lots or divisions of the same land as for the time being shall remain unsold by him or them.

Purchasers to observe stipulations hereinafter contained.

4. And whereas the said [*purchasers*] have severally agreed to purchase of the said [*owner*] Lots 1 to 10 part of the said intended row, shown on the said plan subject to the proposed stipulations and restrictions.

Purchases of parts thereof.

5. Now this Indenture witnesseth, that in consideration of the premises and in pursuance of the conditions aforesaid, and for effectuating the plan aforesaid, it is hereby mutually agreed by and between the said [*owner*], [*purchasers*] and the several other persons who shall at any time or times hereafter execute this indenture (the respective times of the execution thereof by the several parties being expressed in the several attestations thereof), and each of them the said [*owner*], [*purchasers*] and such several other persons as aforesaid, mutually and reciprocally, in manner following (that is to say),—

Testatum.

That the front wall of every house in the said intended row shall be brought immediately up to, but shall not in any case project beyond, the building line shown on the said plan.

Building line.

And also that none of the houses in the said intended row shall have bow windows of any sort.

Bow windows.

And also that the areas in front of the said houses shall be of the width of five feet in the clear, and shall extend the whole length thereof.

Areas.

And that the forecourt in front of each house shall be surrounded by an uniform railing of iron or wood, which shall not extend beyond the height of four feet from the surface of the ground there.

Railings.

And also that the wall of partition between the several houses, and the areas in front of, and the yards and gardens

Party-walls.

Form 118.

behind, such houses respectively, shall be placed equally on the ground of the two proprietors of adjoining houses or ground, and shall at all times be considered as party-walls, and shall be built at the joint expense of the two proprietors of the adjoining houses or land; but if any of them shall be first and originally built at the sole expense of either of the proprietors of the adjoining houses or land, then the proprietor who shall so first and originally build such walls shall build a brick party-wall nine inches thick, and at the height of seven feet from the surface of the ground from the front building ground throughout, and one half of the expense thereof shall be paid to the proprietor who shall have so built the same, by the proprietor of the adjoining house or land, within three calendar months after the proprietor of the adjoining house or land shall begin to erect his or her house in the principal front; and also that the proprietor of such adjoining house or land shall also pay one half part of the expense of so much of the residue of the party-wall as he shall make use of and build to, within one calendar month after he shall make use of and build to the same, and the expense in both cases, if any difference shall arise thereon, shall be determined by admeasurement and value.

No chalk or mould to be put on road.

And also that none of the proprietors of the houses or grounds in the said intended row shall lay any chalk or mould which shall be dug out of any of the lots of land shown on the said plan, on the foot, horse, or carriage way in front of the said row, or on the land lying between the said way and the edge of the sea cliff.

Road to be made.

And also that the piece or slip of land of the breadth of twenty-nine feet, intended to be mentioned in the conveyances to the several purchasers, beyond the area steps of entrance and forecourt shall at all times hereafter remain open and unincumbered as and for a free foot, horse and carriage way in front of the said intended row, and shall be formed, made, maintained and kept repaired at the expense of the several proprietors of the said houses in the said row, in proportion to the extent of front towards the south-east of each house.

Restrictions as to building trades and nuisances.

And also that none of the proprietors of any of the lots for the time being shall at any time or times, or on any account whatsoever, erect or suffer to be erected on any of the

several lots which shall respectively belong to them for the time being, or on any part of them, any public livery stables or public coach house, or use, exercise, or carry on, or suffer to be used, exercised, or carried on thereon, or on any part thereof, the trade or business of a brass founder, tobacco pipe maker, common brewer, tallow chandler, soap boiler, distiller, innkeeper, common alehouse keeper, brazier, working smith of any kind, butcher or slaughterman, or any other noxious or offensive trade or business whereby the neighbourhood might be in any respect endangered or annoyed, or burn or make, or suffer to be burnt or made, on any of the said lots, or on any part of them, any bricks or lime; and also that no other building or buildings than good dwelling-houses or lodging-houses shall be erected on the said lots or any of them. Form 118.

In witness, &c.

Deed of Covenant by Riparian Owners to preserve the Rivers A. and W. and the Water therein within certain Limits pure and free from Rubbish.[1] Form 119.

1. Whereas the several persons whose names and seals are hereto respectively subscribed and affixed (hereinafter called "the parties hereto") are the owners of property situate on the banks of or contiguous to that part of the rivers A. and W. respectively which, commencing as to the A. at B., and as to Recital as to common interest.

[1] Persons having a common interest may agree to unite in a defence, but the agreement must not go beyond the common object; and, therefore, an agreement by several owners and occupiers of land in a parish to concur in defending any actions that may be commenced against any of them by the present or any future rector for the tithes of articles covered by certain specified moduses, or any other moduses, binding themselves not to compromise or settle, and not limited to their continuance in the parish, or to any particular time, is illegal. *Stow* v. *Yea*, Jacob, 427.

Millowners bound themselves by a bond to stop their mills pursuant to resolutions passed by the majority (the object, in fact, being to prevent strikes by their workpeople). Held, that the bond was illegal at common law, as being contrary to public policy, and in restraint of trade, and of the free action of individuals, and was incapable of being enforced by action. *Quære*, whether the entering into such a bond is an indictable offence. *Hilton* v. *Eckersley*, 4 W. R. 326. See and compare *Mogul Steamship Co.* v. *McGregor*, 23 Q. B. D. 598, and cases there cited.

Form 119.

the W. at C., extends as to both to D., all in the county of Y.

Testatum.

2. Now this Indenture witnesseth as follows:—

Parties not to pollute rivers.

3. None of the parties hereto will, during the period of fifteen years commencing from the date hereof, deposit or discharge any stones, clay, soil, ashes, dirt, rubbish, or other refuse matter in or into the said rivers within the limits aforesaid, nor will at any time during the period aforesaid do or suffer to be done anything whatsoever which may tend to the obstruction of the said rivers or either of them within the limits aforesaid, or which may be or become a nuisance, detriment, or annoyance to any other of the parties hereto, or whereby any one or more of them may, during the period aforesaid, be prevented from enjoying the full benefit and advantage of the water of the said rivers respectively within the limits aforesaid, or be in any wise prejudicially affected.

Parties not to permit pollution.

4. The parties hereto respectively will at all times during the period aforesaid, to the best of their ability, prohibit and prevent all persons from discharging any stones, clay, soil, ashes, dirt, rubbish, or other refuse matter, into the said rivers or either of them, within the limits aforesaid, or from doing anything whereby the supply of water to the parties hereto respectively may be in anywise obstructed or lessened, or rendered impure, or whereby the estate or effects of them, or any of them, may be in anywise prejudicially affected.

Parties to help in preventing pollution by subscribing funds,

5. The parties hereto respectively will give all the aid and assistance in their power (both by subscribing from time to time such sums of money, not exceeding upon any one occasion the sum of £5 each, or by such other means as may be considered most advisable by a majority of them, or of the parties for the time being interested hereunder, to be assembled at any meeting after due notices in writing have been given to them respectively, or left at their respective usual or last-known places of abode at least one week before the said meeting) to or towards any proceeding at law or otherwise against any person or persons whomsoever, who shall discharge any stones, clay, soil, ashes, dirt, rubbish, or other refuse matter into the said rivers, or either of them, within the limits aforesaid.

and otherwise.

6. The parties hereto will, upon the determination and application of such majority as aforesaid, do all such further

Form 119.

or other lawful and reasonable acts, and also enter into such further deeds as may be considered necessary for the further, better, and more perfectly prohibiting or preventing the discharge of any stones, clay, soil, ashes, dirt, rubbish, or other refuse matter into the said rivers, or either of them, within the limits aforesaid, and also for the further and more perfectly prohibiting or preventing any other person or persons from discharging any stones, clay, soil, ashes, dirt, rubbish, or other refuse matter, into the said rivers, or either of them, within the limits aforesaid, or otherwise annoying or prejudicially affecting the parties hereto, or any of them, or their or any of their estates or effects, by obstructing the course or lessening the quantity of, or rendering impure, the water of the said rivers, or either of them, within the limits aforesaid, and also all such other things as may be considered necessary or expedient by such majority as aforesaid.

Parties to indemnify each other.

7. The parties hereto will at all times during the period aforesaid defend and keep indemnified each other from and against all actions, accounts, reckonings, costs, damages, claims, and demands whatsoever, which they may incur or sustain by reason of their commencing or prosecuting any proceeding at law or otherwise under this indenture, and for the purpose of effectuating the same.

Expenses to be borne equally.

8. All moneys that shall be required for the purpose of carrying anything herein contained or relating thereto into execution or effect shall, subject to the provisions hereinafter contained, be contributed in equal shares by the parties hereto; and no one of the parties hereto shall be liable to pay any greater sum of money, or bear or be put to any greater risk in proportion to the value of his property or interest, than the other or others of them, unless it shall be declared or resolved otherwise by a majority of the parties hereto assembled at any meeting to be called as aforesaid.

No legal proceedings to be taken without assent of majority.

9. No proceeding at law or otherwise shall be commenced or prosecuted by any of the parties hereto in relation to any of the matters aforesaid, unless and until the party so taking, commencing, or prosecuting the same shall have first obtained an authority in writing to do so, signed by a majority present at a meeting to be called as aforesaid for the purpose of conferring such authority.

In witness, &c.

DECLARATION.

Form 120.

Statutory Declaration verifying Notice of Dissolution of Partnership.

I, G. H., of, &c., sincerely and solemnly declare that I was present on the [*date*], and saw A. B., of, &c., C. D., of, &c., and E. F., of, &c., severally sign the notice of dissolution of partnership hereto annexed, and that the names "A. B.," "C. D." and "E. F." severally subscribed at the foot of the said notice of dissolution are the several handswriting of the said A. B., C. D., and E. F., respectively, and that the name "G. H." appearing as that of the attesting witness of the said notice, is my own handwriting. And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act, 1835.

G. H.

Declared at X., in the county of Y., this —— of ——, 18 —, before me, K. L., a commissioner to administer oaths in the Supreme Court of Judicature in England.

DISCLAIMERS.

Disclaimer of Trusts of Will.

Form 121.

Introduction. 1. To all to whom this Deed shall come, A. B., of, &c., sends greeting:

Will. 2. Whereas C. D., late of, &c., by his will dated, &c., appointed the said A. B. and E. F. trustees and executors thereof; and also appointed his wife and the said A. B. and E. F. guardians of his infant children; and he thereby also bequeathed his leasehold messuage at X. unto the said A. B. and E. F., upon the trusts thereby declared; and also devised and bequeathed unto the said A. B. and E. F. all and singular his freehold and other leasehold estates, and the residue of his personal estate, upon the trusts thereby declared.

Death and probate. 3. And whereas the said C. D. died [*date*] without having revoked or altered his said will, and the same was proved by the said E. F. alone on the [*date*], in the principal Probate Registry of the High Court of Justice, the said A. B. having first renounced probate thereof.

4. And whereas the said A. B. has not acted or interfered in the execution of the trusts of the said will, or as guardian of the said children.

Testatum. 5. Now this Deed witnesseth that the said A. B. renounces and disclaims all and singular the said leasehold messuage at X., and all and singular the testator's freehold and leasehold estate, and the residue of his personal estate, and all and singular other the real and personal estate and effects whatsoever given, devised, or bequeathed by the said will, and all devises, bequests, legacies, and benefits made or given to him by the said will, and also the said office of trustee and executor of the said will and guardian of the children of the testator, and all trusts, powers, authorities, rights, and privileges whatsoever under the said will.

In witness, &c.

Form 122. DISCLAIMER OF TRUSTS OF WILL—SHORT FORM.

Introduction. 1. TO ALL TO WHOM THIS DEED shall come, A. B., of, &c., sends greeting:

Will. 2. WHEREAS C. D., late of, &c., made his will, dated, &c., and thereby appointed the said A. B. and T. S., of, &c., executors thereof, and devised and bequeathed all his real and personal estates unto the said A. B. and T. S., upon the trusts and for the intents and purposes therein mentioned.

Death. 3. AND WHEREAS the said C. D. died on, &c., without having revoked or altered his said will.

A. B. has not acted. 4. AND WHEREAS the said A. B. has not acted in the trusts or executorship of the said will or accepted any of the devises or bequests thereby made to him.

Testatum. 5. NOW THIS DEED WITNESSETH, that the said A. B. hereby disclaims all the devises and bequests made to him, and all the trusts, powers and discretions reposed or vested in him by the said will, either jointly with the said T. S. or otherwise.

IN WITNESS, &c.

Form 123. DISCLAIMER BY TRUSTEES OF COPYHOLDS IN ORDER THAT ONE OF THEIR NUMBER ONLY MAY TAKE ADMITTANCE.

Parties. 1. THIS INDENTURE, made [*date*], between [*disclaiming trustees*], of the one part, and [*continuing trustee*], of the other part.

Will. 2. WHEREAS [*here recite will, death of testator, and proof of will, as in two previous forms*].

No admittance. 3. AND WHEREAS no person has since the decease of the testator been admitted to the said copyhold hereditaments holden of the manors aforesaid, or any of them.

Intention to vest in one trustee. 4. AND WHEREAS the said [*disclaiming trustees*], and also the said [*continuing trustee*], are desirous that the said copyhold hereditaments holden of the manors aforesaid should be vested in the said [*continuing trustee*] solely to the intent that he alone may be admitted thereto, and for that purpose the said [*disclaiming trustees*] have agreed to execute the disclaimer and release hereinafter contained.

Testatum (disclaimer). 5. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, the said [*disclaiming trustees*] hereby

disclaim all and singular the copyhold hereditaments devised by the said will of the testator, and holden respectively of the manors of, &c. [except as to the said C. D., the power of appointment and the beneficial interest for her life given to her by the said will]. Form 123.

6. And this Indenture further witnesseth, that, in further pursuance of the said agreement, the said [*disclaiming trustees*] hereby release unto the said [*continuing trustee*] and his heirs. Testatum (release).

7. All and singular (if any) their right to be admitted, or other their right, estate and interest, if any, to and in the said copyhold hereditaments holden of the said manors of, &c., with the rights, members, and appurtenances thereto belonging [except as to the said C. D., the power of appointment and beneficial interest for her life given to her by the said will], to the intent that the right to be admitted to and to hold the premises may be vested in the said [*continuing trustee*], and his heirs, as sole tenant or tenants thereof, according to the customs of the said manors respectively. Parcels.

In witness, &c.[1]

DISENTAILING DEED.

Disentailing Deed by Tenant in Tail with Consent of Protector. Form 124.

1. This Indenture, made [*date*], between C. D., of, &c. [*tenant in tail*], of the first part, E. D., of, &c. [*protector*], of the second part, and G. H., of, &c. [*releasee*], of the third part. Parties.

2. Whereas by an indenture dated, &c., and made between [*parties*], the hereditaments hereinafter assured were limited Recital of settlement.

[1] As to the above disclaimer, see *Lord Wellesley* v. *Withers*, 24 L. J. Q. B. 139.

Form 124.

to the use of the *said A. B.* and his assigns for his life, without impeachment of waste, with remainder to the use of the said E. D. and his assigns for his life, without impeachment of waste, with remainder to the use of *the said I. K.* and his heirs during the lives of the said A. B. and E. D., and of the survivor of them, in trust for them, and to preserve contingent remainders, with remainder to the use of the first and other sons of the said E. D. successively, according to their respective seniorities, in tail, with divers remainders over.

Recital as to tenant in tail.

3. And whereas the said C. D. was the first and eldest son of the said E. D., and he attained the age of twenty-one years on [*date*].

Recital of death of first tenant for life.

4. And whereas the said A. B. died on [*date*].

Recital of desire to bar entail.

[5. And whereas the said C. D. is desirous of barring the said estate tail, and all other estates tail of him the said C. D. in the hereditaments hereinafter assured, and all remainders, reversions, estates, rights, interests, and powers, to take effect after the determination, or in defeasance of such estate tail or estates tail, and of assuring the same hereditaments to the uses, upon the trusts, and subject to the power hereinafter contained (subject to the estates by the said indenture limited, which precede the estate tail thereby limited to the first son of the said E. D., and to the powers and privileges to the same preceding estates annexed, so far as the same estates, powers, and privileges are now subsisting or capable of taking effect.)

Recital of consent of protector.

6. And whereas the said E. D., as protector of the said settlement, has agreed to concur herein for the purpose of giving his consent to the disposition intended to be hereby made by the said C. D.][1]

Testatum.

7. Now this Indenture witnesseth, that [for effectuating the said desire of the said C. D., and], in consideration of the premises, the said C. D., with the consent of the said E. D., hereby grants unto the said G. H.

Parcels.

8. All [*parcels*], and also all other the hereditaments (if any), which are now subject to the subsisting uses of the said indenture of [*date*].

Habendum.

9. To hold the said hereditaments unto the said G. H.

[1] §§ 5 and 6, and the words in brackets in § 7, may be omitted,

and his heirs, subject to the estates by the said indenture of, &c., limited, which precede the estate tail by the same indenture limited to the said C. D., and to the powers and privileges to the same precedent estates annexed during the continuance thereof, so far as the same are now subsisting or capable of taking effect, but freed and discharged from the said estate tail, and all other estates tail of the said C. D., and all remainders, reversions, estates, rights, titles, interests, and powers, to take effect after the determination of such estate or estates tail, To such uses as the said C. D. and E. D. shall by deed jointly appoint, and in default of such appointment and so far as no such appointment shall extend. To the use of the said C. D., his heirs and assigns. Form 124.

In witness, &c.

GUARANTEES.

Guarantee of a Mortgage Debt. Form 125.

To A. B., of, &c. In consideration of your having this day, at our request, advanced to C. D., of, &c., the sum of £500 on the security of a mortgage of certain hereditaments situate at X., effected by an indenture, dated, &c., and made between the said C. D. and yourself, under which the said sum is to be repaid on [*date*], with interest thereon at the rate of £5 per cent. per annum, and if not so paid, interest thereon at the like rate is payable half-yearly on every [*dates*] on the sum remaining unpaid, we jointly and severally agree to pay to you, on demand, all principal money and interest for the time being due and payable under the said indenture, and our or either of our liability shall not be released or affected by your giving time to the said C. D., or otherwise varying the provisions of the said indenture, or by any other act

Form 125. which in the absence of this provision would operate to release us or either of us as sureties or a surety for the said C. D. from liability under this agreement.

Dated, &c.

Form 126. GUARANTEE BY A SURETY OF THE RENT OF A FARM.

To A. B., of, &c. In consideration of your letting, at my request, to C. D., of, &c., as yearly tenant, from, &c., at the yearly rent of £250, payable on [*dates*], the farm, containing about 175 acres, situate at, &c., recently occupied by his late father, I undertake that the rent shall be punctually paid either by the said B. or by myself, and I also undertake to lend the said B. such sum or sums of money as he may require (not exceeding altogether £500) to enable him to cultivate and carry on the said farm, the amount lent not to be called in before the [*date*], unless I shall previously die. And in the event of my death before that day, I undertake by my will, or some codicil thereto, to leave to the said B. sufficient money or property to enable him to carry on the said farm.

Dated, &c.

Form 127. INDEMNITY BY RESIDUARY LEGATEE TO TRUSTEES ON RECEIPT OF HIS SHARE OF A TESTATOR'S ESTATE.

To A. B., of, &c., and C. D., of, &c., trustees and executors of the will (proved on, &c., at, &c.) of E. F., deceased. I acknowledge to have this day received from you the sum of £250, representing (and which I accept as being) the whole of the moiety to which I am entitled of the residuary estate of the above-named E. F.; and I also acknowledge that such sum was paid on the understanding that I should (and I agree to) indemnify you against one-half part of all moneys and expenses you may pay or incur by reason of proceedings or claims hereafter taken or made against you or either of you as such trustees as aforesaid by any person or persons whomsoever.

Dated, &c.

LEASES AND TENANCY AGREEMENTS.

Agreement for Tenancy of a Small House for Three Years.[1] Form 128.

1. An Agreement made [*date*], between A. B., of, &c., of the one part, and C. D., of, &c., of the other part :— Parties.

2. The said A. B. lets, and the said C. D. takes, from the date hereof, for the term of three years, all that messuage known as No. 1, X. Street, in the parish of Y., with the yard, garden, outbuildings, and appurtenances thereto (as the same were lately in the occupation of G. H.), at the yearly rent of £20. Term and rent.

3. The said C. D. shall pay the said rent quarterly (the first quarter's payment to be made on the [*date*]), and shall also pay all rates, taxes, and other outgoings whatsoever in respect of the premises (except only property tax). Rent and rates.

4. The said A. B. shall, during the term, keep the premises in tenantable repair. Repair.

5. Upon non-payment of rent for twenty-one days after it becomes payable, or upon breach by the tenant of any stipulation herein, the landlord may re-enter and determine the tenancy.

As witness, &c.

Agreement for Tenancy of Furnished House. Form 129.

1. An Agreement made [*date*], between A. B., of, &c. (hereinafter called "the landlord"), of the one part, and C. D., of, &c. (hereinafter called "the tenant"), of the other part. Parties.

2. The landlord lets, and the tenant takes, for three years from the date hereof, the messuage situate in and known as Term and rent.

[1] This agreement takes effect as a lease, and must be stamped as such. See p. 8. For agreements which do not take effect as leases at law, see p. 268. And as to the rights of the parties under such an agreement, if it is one of which specific performance would be enforced, see *Walsh* v. *Lonsdale*, 21 Ch. D. 9; and *Coatsworth* v. *Johnson*, 55 L. J. Q. B. 220.

Form 129.

No. 500, X. Street, in the parish of Y., in the city of Z., with the garden, yard, and outbuildings thereto belonging [and also the fittings, furniture, and other effects specified in the schedule hereto, which are now in the said messuage, and are hereinafter called "the scheduled effects"], at the annual rent of £——.

Payment of rent and outgoings.

3. The tenant will pay the said rent on the usual quarter days, making the first payment at Michaelmas next, and will pay all taxes, rates, assessments, and charges on or in respect of the premises, except landlord's property tax.

Repair, &c.

4. The tenant will keep the premises [including the scheduled effects] in good and complete repair [and will not remove, or permit the removal of, any of the scheduled effects, except for the purpose of repair, and will replace such (if any) of the scheduled effects as may be lost, broken, destroyed, or worn out by similar articles of equal quality.]

Insurance.

5. The tenant will keep the premises insured in an office to be approved of by the landlord [as to the buildings in £——, and as to the scheduled effects] in £——.

User.

6. The premises shall be used by the said C. D. as a private dwelling-house only, and no structural alteration shall be made by him in the same, nor shall any trade or occupation be carried on therein, nor shall the said C. D. allow any sale by auction to take place on the premises.

Power of re-entry.

7. Upon any breach by the tenant of any stipulation herein (including due payment of rent), the landlord may re-enter and determine the tenancy.

As witness, &c.

Form 130.

Tenancy Agreement of House (Yearly).

Agreement.

1. Terms of Tenancy have been agreed upon [*or* Lease made this —— of ——, 1897] as follows :—

Landlord.

2. Landlord (who lets but without implying any covenant or warranty) is A., of, &c.

Tenant.

3. Tenant (who takes) is B., of, &c.

Property.

4. Property let is the house with outbuildings, garden, and yard, No. 1 in X. Street, Y., in the county of Z.

Term.

5. Duration of Tenancy is from year to year.

Rent.

6. Yearly Rent is £——, to be paid by tenant in equal portions on every [*dates*].

Form 130.

7. ABATEMENT OF RENT to be allowed to tenant as follows:— Abatement.

(*a.*) Part, not exceeding £——, of the first half-year's rent towards moneys to be expended by tenant in executing the works specified in the schedule hereto, on the expenditure of at least that sum being proved to landlord's satisfaction.

(*b.*) The whole or a proportionate part (as the case may require) of the rent if and while the house is wholly or partially uninhabitable through destruction or damage by fire.

8. RATES AND TAXES and outgoings of every description for the time being payable in respect of the property are to be paid by tenant. Rates.

9. REPAIRS are to be done as follows:— Repairs.

(*a.*) The tenant, within three calendar months from this date, to execute the works specified in the schedule hereto to landlord's satisfaction.

(*b.*) The tenant, without any request from landlord, to keep the property in complete repair (except roof, main walls, principal timbers, and damage by accidental fire) and (as a separate and independent obligation) within three calendar months after notice from landlord to execute all repairs (except as aforesaid) specified in such notice.

(*c.*) The landlord to keep the roof, main walls, and principal timbers in repair.

10. INSPECTION of the property is to be allowed:— Inspection.

(*a.*) To landlord or his agent at all reasonable times to examine the condition thereof.

(*b.*) To all persons applying during the last three calendar months of the tenancy and producing landlord's written authority for the purpose.

11. USER OF THE PROPERTY is to be for the purpose of a private dwelling-house only. User.

12. ASSIGNMENT or underletting of the property, or part thereof, is not to be made by tenant. Assignment.

13. DETERMINATION OF THE TENANCY may be effected:— Determination.

(*a.*) At the end of any year by three calendar months' previous written notice given by either party to

Form 130.

the other, or left at or sent by post (registered) to his last-known place of residence in England.

(*b.*) At any period of any year by 14 days' previous written notice given by the landlord or left or sent as aforesaid for the tenant, and to be given only if the rent is wholly or partly in arrear for 21 days (whether legally demanded or not), or if there is a breach of any of the foregoing terms of the tenancy which ought to have been performed or observed by the tenant.

As witness, &c.

The Schedule above referred to.

Repairs to be done by tenant. [*Specify them.*]

Form 131.

Tenancy Agreement of House for less than Three Years—Concise Form.

Parties. 1. An Agreement made [*date*], between A. B., of, &c. (hereinafter called "the landlord"), of the first part, and C. D., of, &c. (hereinafter called "the tenant"), of the second part.

Agreement. 2. The Landlord agrees to let, and the tenant agrees to take, the property hereinafter described, upon the terms hereinafter contained.

Parcels. 3. Parcels.—[*Insert description.*]

Term. 4. Term.—For twelve months certain, commencing from the [*date*], since which time the tenant has been in possession.

Rent, &c. 5. Rent.—£120, payable quarterly, on the 24th of March, 25th of June, 29th of September, and 25th of December; the first payment to be made on the 25th of March next, but the last quarter to be paid twelve days before Christmas; landlord to bear and pay all rates, taxes, assessments, and outgoings of all kinds, except gas rate.

Use. 6. Use.—Premises to be used as a private residence only, but this not to interfere with the profession of a physician or surgeon carried on by the tenant, and nothing to be done or carried on therein to vitiate any insurance or to increase the premium; tenant not to assign or underlet without landlord's permission in writing.

7. Repairs.—Tenant to repair broken windows, to clean out gutters and pipes, and make good all damages caused by non-removal of snow, as well as any other wants and amendments which may be rendered necessary through the tenant's neglect or default. Form 131. Repairs.

8. View.—Landlord or his agent, workmen, or servants, may at all reasonable times enter to view the premises to do all repairs he may think requisite (but landlord not to be bound to do any repairs), and for all other necessary purposes. View.

9. Re-entry.—If any quarterly payment of rent be in arrear for twenty-eight days, or if the premises be left vacant, or the tenant become bankrupt or insolvent, or break or make default in any of the stipulations herein contained, the landlord may, after one week's notice (signed by himself or his agent), to be left at or affixed to the door or some other conspicuous part of the premises, but without any other formality, retake possession of the premises as if this agreement had not been made, but without prejudice to any other remedies he may have. Re-entry.

10. Bill "to let."—Landlord to be at liberty, one month previous to the expiration of the tenancy, to put a bill in the front drawing-room window for reletting the premises, and the tenant to keep the same always exposed to view, and to afford facilities for intending tenants to view the premises at all reasonable hours. Bill "to let."

11. Expenses.—Tenant to pay £2 towards the expenses of this agreement. Expenses.

As witness, &c.

Agreement for Weekly Tenancy of a Cottage between a Manufacturer or Colliery Owner and his Workman. Form 132.

1. An Agreement made [*date*], between A. B., of X. Mills, &c. [or colliery] (hereinafter called "the landlord"), of the one part, and C. D., of, &c., aforesaid (hereinafter called "the tenant"), of the other part, whereby the landlord agrees to let, and the tenant agrees to take, the cottage known Parties, &c.

Form 132.

as No. 1, W. Street, at X., in the parish of Y., in the county of Z., with its appurtenances, upon the following terms (that is to say) :—

Term.

2. The tenancy shall commence on the [*date*], and continue for one week, and thenceforward from week to week until the same shall be determined by a week's notice to quit in writing, terminating with a current week, to be given either by landlord or tenant to the other, and which notices may respectively be given by causing the same to be left, in the case of notice by the landlord, at the cottage aforesaid, and in case of notice by the tenant, at the office of X. Mills [or colliery] aforesaid.

Rent.

3. The rent shall be 5*s.* per week, and shall be payable weekly without deduction, and in case of notice to quit being given on either side the rent for the last week of the tenancy shall be payable in advance.

Deduction of rent from wages.

4. The landlord may deduct out of any wages for the time being payable by him to the tenant as his overlooker, woolsorter, spinner, weaver, mechanic, pitman, miner, workman, artificer, servant, or otherwise, any sum or sums which shall be payable for the time being by the tenant to the landlord for rent of the premises.

Repairs by tenant.

5. The tenant shall, at his own expense [keep clean, in good order and condition the privy used with the said cottage, and also such part of the waste land in the rear of the said cottage as is immediately opposite thereto, and sweep the chimneys when necessary, and] keep the said cottage in clean, wholesome, and decent condition. And the tenant shall also, at his own expense, repair or make good all broken windows and other glass, locks, bolts, hooks, door-handles, bells, bell-wires, hinges, latches, window fastenings and sash lines, and also all damage, waste, spoil, and unreasonable wear and tear done or committed wilfully, negligently, or carelessly by the tenant, his family, or lodgers, and in case the tenant, after being required to do any of the things by this clause agreed by him to be done, shall for the space of seven days neglect or omit to do the same, the landlord may do the same, and the tenant shall repay to the landlord all sums expended by him in so doing within seven days after such sums shall have been so expended, after which

period of seven days such sums so expended shall be recoverable by deduction from wages as aforesaid, or by any other legal remedy. Form 132.

6. Save as aforesaid, the landlord will at his own expense keep the premises in tenantable repair. Repairs by landlord.

7. The landlord and all persons authorized by him may at all reasonable hours in the daytime enter upon the premises and every part thereof, to view the state thereof, and to repair the same. Power to enter.

8. The premises shall not be used as a shop for any trade or business. User.

9. The tenant shall not assign, underlet, or part with the possession of the premises or any part thereof without the written consent of the landlord, but this clause is not to prevent the tenant from taking lodgers. Alienation.

10. Upon determination of his tenancy the tenant shall peaceably give up possession of the premises and fixtures to the landlord in a clean condition, and if the tenant shall neglect or refuse so to give up possession, the landlord may take possession of the premises and expel the tenant forcibly, if necessary. Possession at end of tenancy.

11. The tenant performing his part of this agreement may quietly enjoy the premises during his tenancy without any eviction, interruption, or disturbance by the landlord or any person lawfully claiming through or in trust for him.[1] Quiet enjoyment.

As witness, &c.

Lease of a House in Town. Form 133.

1. This Indenture, made, &c., between A. B., of, &c., of the one part, and C. D., of, &c., of the other part. Parties.

2. Witnesseth, that, in consideration of the rent hereby reserved, and the covenants hereinafter contained, the said A. B. demises unto the said C. D., Demise.

3. All that messuage or dwelling-house situate in and being No. 99, X. Street, in the parish of Y., in the city of Z., with the garden, yard, and outbuildings thereto belonging, Parcels.

[1] No power of re-entry is inserted, because, as the tenancy is a weekly one, it can be speedily determined on non-payment of rent or breach of covenant, and § 4 gives the landlord a sufficient remedy for rent in arrear.

Form 133.

as the same is delineated and coloured pink in the plan drawn in the margin hereof, To hold unto the said C. D. for twenty-one years from [*date*].

Rent.

4. YIELDING and paying therefor yearly unto the said A. B. the rent of £ —— by quarterly payments on the usual quarter days, the first payment to be made on [*date*].

Lessee's covenants—

5. AND the said C. D. hereby covenants with the said A. B. as follows:—

to pay rent, rates, &c.;

(*a.*) To pay unto the said A. B., during the said term, the rent hereby reserved in manner aforesaid, without any deduction (except landlord's property tax); and also to pay all taxes, rates, duties, and assessments, whether parochial, parliamentary, or otherwise, now charged or hereafter to be charged on the premises or the lessor or lessee on account thereof.

to repair generally;

(*b.*) During the said term to well and sufficiently repair, maintain, pave, cleanse, amend, and keep the demised premises and every part thereof, with the appurtenances, in good and substantial repair and condition.

to execute works;

(*c.*) During the said term at his own expense to execute all works required to be done by any local authority under the Public Health Act, 1875, or otherwise.[1]

to paint;

(*d.*) In every third year of the said term to paint all the outside wood-work and iron-work belonging to the premises with two coats of proper oil colours in a workmanlike manner; and also, in every seventh year, to paint or grain and varnish the inside wood, iron, and other work now or usually painted or grained and varnished (such painting to be done with two coats of proper oil colours in a workmanlike manner), and re-paper, with paper of such quality as at present, such parts of the premises as are now papered, and wash, stop, whiten, or colour such parts of the premises as are now plastered.

to insure and reinstate;

(*e.*) Forthwith to insure and keep insured the premises in the sum of [£1,500] in some respectable insurance office approved of by the said A. B. in the joint names of the said A. B. and C. D., and, upon the request of

[1] See also Public Health Water Act, 1878, § 3; and *Cook* v. *Montague*, L. R. 7 Q. B. 418.

Form 133.

the said A. B. or his agent, to show the receipt for the last premium paid for such insurance for every current year; and as often as the premises shall be burnt down or damaged by fire, to expend all sums of money which shall be received by the said C. D. in respect of such insurance in building or repairing the demised premises, or such parts thereof as shall be burnt down or damaged by fire.

(*f.*) To permit the said A. B., and his agents, at all reasonable times during the said term, to enter the demised premises, to take a schedule of the fixtures and things thereupon, and to examine the condition of the premises; and all wants of reparation which, upon such views, shall be found, and for the amendment of which notice in writing shall be left at the premises, to well and sufficiently repair and make good within three calendar months next after every such notice accordingly. to permit entry and repair on notice;

(*g.*) [Not to convert, use, or occupy the premises, or any part thereof, into or as a shop, warehouse, or other place for carrying on any trade or business whatsoever, or suffer the premises to be used for any such purpose or otherwise than as a private dwelling-house.] as to user;

(*h.*) [Not to assign, transfer, or underlet the premises, or any part thereof, without the consent in writing of the said A. B.[1]] not to assign;

(*i.*) At the expiration or sooner determination of the said term, peaceably to yield up the premises, with the appurtenances and all additions thereto, unto the said A. B., his heirs or assigns, together with all buildings and fixtures thereon, in good and substantial repair and condition in all respects. to deliver up.

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[1] Instead of this, the following clause may be used:—

Not at any time during the said term to assign or underlet the premises hereby demised, or any part thereof, without the previous consent in writing of the said A. B., his heirs or assigns; provided, nevertheless, that such consent shall not be unreasonably or capriciously withheld.

Form 133.

6. And the said A. B. hereby covenants with the said C. D. as follows:—

Lessor's covenants—

for quiet enjoyment;

(*a.*) That he, paying the rent hereby reserved, and performing the covenants hereinbefore on his part contained, may peaceably enjoy the demised premises for the term hereby granted without any interruption or disturbance from the said A. B., or any person lawfully claiming through or in trust for him.

[*In an underlease, the following covenant should be added:*]

to produce original lease.

(*b.*) That the said A. B. will, during the said term (if not prevented by fire or other inevitable accident), at the request and cost of the said C. D., produce to him, or as he may direct [in England], the said indenture of lease of the [*date*], and will, at the like request and cost, furnish to the said C. D. such copies or extracts (attested or otherwise) of or from the said indenture as he may require.

Provisoes—

7. Provided always, that—

for re-entry;

(*a.*) If the rent hereby reserved or any part thereof shall be in arrear for twenty-one days (although no formal demand shall have been made thereof), or in case of the breach or non-performance of any of the said C. D.'s covenants herein contained, then and in any such case it shall be lawful for the said A. B. at any time thereafter into and upon the premises or any part thereof in the name of the whole to re-enter and the same to have again as in his former estate.[1]

for cesser of rent on damage by fire;

(*b.*) [In case the premises, or any part thereof, shall be burnt down or damaged by fire so as to render the same unfit for habitation, the rent hereby reserved, or a proportionate part thereof according to the nature and extent of the injury sustained, and all remedies for recovering the same, shall be suspended and abated until the premises shall have been rebuilt and made fit for habitation.][2]

In witness, &c.

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[1] See *Phillips* v. *Bridge*, L. R. 9 C. P. 48.

[2] Or the term may be made to determine on destruction as follows:—

(*b.*) In case there shall be a total (or a damage equivalent to what may be considered a total) destruction by

LEASE OF A HOUSE, THE LESSOR INSURING AND DOING OUTSIDE REPAIRS. **Form 134.**

1. THIS INDENTURE, made, &c. Parties.

2. WITNESSETH, that, in consideration of the rent hereby reserved, and the lessee's covenants hereinafter contained, the said A. B. hereby demises unto the said C. D. Demise.

3. ALL, &c. [*insert description of house*]. Parcels.

4. To hold the same unto the said C. D. for twenty-one years from [*date*]. Habendum.

5. YIELDING and paying therefor yearly the rent of £—— by quarterly payments on the usual quarter days, the first payment to be made on [*date*]. Reddendum.

6. AND the said C. D. hereby covenants with the said A. B. as follows:— Lessee's covenants—

(*a.*) During the said term to pay [*continue as in last preceding Form*]. to pay rent, rates, and taxes;

(*b.*) During the said term well and sufficiently to repair the whole of the premises (except such portions thereof as are hereinafter covenanted to be repaired by the said A. B.), and to keep the same in good and substantial repair and condition. to repair;

(*c.*) In every seventh year to paint, grain, or varnish the inside wood, iron, and other work now or usually painted, grained, or varnished, with two coats of proper oil colours, or with the best graining materials and varnish, in a workmanlike manner; and also to re-paper with paper of such quality as at present such parts of the premises as are now papered; also to wash, stop, whiten, or colour such parts of the premises as are now plastered. to paint inside and paper;

(*d.*) To permit the said A. B. and his agents at all reasonable times [*continue as in last preceding Form*]. to permit lessor to enter;

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accidental fire, storm, or tempest of the said messuage, Then the term hereby created shall cease and determine as if the same had expired by effluxion of time immediately before the happening of such fire, storm, or tempest, the lessee paying a proportionate part of the rent up to the day of the happening of such fire, storm, or tempest.

Form 134.

not to use except as dwelling-house;

not to assign or underlet;

(*e.*) Not to convert, use, or occupy the premises [*continue as in last preceding Form*].

(*f.*) Not to assign [*continue as in last preceding Form*].

(*g.*) At the expiration [*continue as in last preceding Form*].

Lessor's covenants.

7. And the said A. B. hereby covenants with the said C. D. as follows:

(*a.*) To keep the main walls, main timbers, roof, gutters, spouting, and all the external parts of the said messuage (except doors, windows, conservatories, and greenhouses, and the fittings thereof respectively) in a good and substantial state of repair.

(*b.*) In every fourth year of the said term to paint, grain, varnish, and tar such parts of the outside wood and iron work of the premises as are usually painted, grained, varnished, or tarred respectively, and, as often as may be necessary, to make good any defective pointing or stucco in or about the outside of the premises.

(*c.*) To keep the premises insured against loss or damage by fire.

(*d.*) That the said C. D. paying, &c. [*continue covenant for quiet enjoyment as in last preceding Form*].

Other provisions.

8. And it is hereby agreed and declared as follows:—

(*a.*) If the rent hereby reserved [*continue as in last preceding Form*].

(*b.*) If the premises shall be totally destroyed by fire either party may, by notice in writing to the other, determine the term hereby created as from the day of such destruction.

In witness, &c.

Form 135.

Lease of a Public-house.

Parties.

1. This Indenture, made, &c., between A. B., of, &c., of the one part, and C. D., of, &c., of the other part.

Demise.

2. Witnesseth, that, in consideration of the rent hereby reserved, and of the covenants and agreements hereinafter contained, the said A. B. hereby demises unto the said C. D., his executors, administrators, and assigns,

Form 135.

3. All that messuage or public-house known by the sign of the White Horse, situate in X. Street, in the parish of F., in the county of Middlesex, as the same is now in the occupation of the said C. D., together with all easements, vaults, cellars, yards, and appurtenances to the premises belonging or appertaining, To hold the premises, with the appurtenances, unto the said C. D. for twenty-one years from the [*date*]. Parcels. Term.

4. Yielding and paying [*reservation of rent as in Form* 133, p. 434]. Rent.

5. And the said C. D. hereby covenants with the said A. B. as follows:— Lessee's covenants—

(*a.*) To pay [*continue as in Form* 133, p. 434]. to pay rent, &c.;

(*b.*) At all times during the said term to sufficiently repair and maintain, and keep in repair, with good materials, the premises hereby demised [together with the glass and other windows, window shutters, doors, locks, fastenings, bells, partitions, ceilings, chimney-pieces, pavements, pitchings, privies, drains, sinks, cesspools, cisterns, pumps, wells, pipes, water-closets, and water-courses, to the premises belonging], and all buildings, improvements, and additions at any time during the said term erected or made by the said C. D., his executors, administrators, or assigns, upon the premises. to repair;

(*c.*) In every third year [*to paint outside and inside, as in Form* 133, § 5 (*d*), p. 434]. to paint, &c.;

(*d.*) Forthwith [*to insure, as in Form* 133, § 5 (*e*), p. 434]. to insure and reinstate;

(*e.*) To permit [*lessor to enter, as in Form* 133, § 5 (*f*), p. 435]. to permit entry;

(*f.*) At the expiration [*to deliver up, as in Form* 133, § 5 (*i*), p. 435]. to deliver up;

(*g.*) Not to use, exercise, or carry on, or permit or suffer to be used, exercised, or carried on, in or upon the premises, any noxious or offensive trade or business, without the consent in writing of the said A. B. not to permit offensive trades;

(*h.*) Not to convert the premises hereby demised, or any part thereof, into a shop, warehouse, shed, or place of sale for goods or merchandize, or into a private dwelling-house, or open, or use, or suffer the same to be opened or used for any other purpose than as an not to alter;

Form 135.

hotel or inn, public-house, or tavern without the like consent.

to conduct business properly;

(*i.*) To conduct the business of the said public-house during the said term in a regular and proper manner in every respect, and immediately to apply for and use his best endeavours to obtain a certificate, licence, or permission of her Majesty's justices of the peace for the vending of wines, spirituous liquors, and beer on the premises, and not knowingly or willingly to do any act whereby the same may become legally or justly abrogated, forfeited, or refused.

(*j.*) Forthwith after any such certificate, licence, or permission shall have been obtained at his own cost to insure the same, and to keep the same insured during the said term in the sum of £—— in some insurance office to be approved of by the said A. B., and upon the request of the said A. B. or his agent, to show the receipt for the last premium payable in respect of such insurance for every current year.

not to alter sign;

(*k.*) At all times during the said term to manage or conduct the business of the said public-house, hotel, or inn, under the name of, and constantly keep up the effigy or sign of, the "White Horse."

to deliver up licences.

(*l.*) At the end or sooner determination of the said term, upon demand by the said A. B., or his incoming tenant, to deliver up the said several certificates, licences, or permissions of her Majesty's said justices of the peace granted during the then current year, for the vending of any wines, spirits, liquors, beer, ale, or tobacco upon the demised premises, and also all and every the excise licences for the unexpired term they may have then to run.

Lessor's covenant.

6. And the said A. B. hereby covenants with the said C. D. that he paying [*covenant for quiet enjoyment, as in Form* 133, § 6 (*a*), p. 436].

Provisoes—

7. And it is hereby agreed and declared as follows:—

for re-entry;

(*a.*) If the rent [*proviso for re-entry, as in Form* 133, § 7 (*a*), p. 436].

for cesser of rent;

(*b.*) In case the premises [*proviso for cesser of rent, as in Form* 133, § 7 (*b*), p. 436].

for determination;

(*c.*) If the said A. B. or C. D. shall be desirous to deter-

mine this demise at the end of the first seven or fourteen years of the said term, and of such desire shall give six calendar months' notice in writing to the other of them before the expiration of the said seven or fourteen years, then and in that case the term hereby granted shall, at the expiration of the said seven or fourteen years, cease and determine. Form 135.

(*d.*) If the said licences shall be forfeited, or if the renewal thereof shall be refused for any cause other than the neglect, default, or misconduct of the said C. D., the term hereby created shall, immediately upon such forfeiture or refusal, cease and determine. as to § 63 of Conveyancing Act, 1881.

In witness, &c.

Agreement for Tenancy from Year to Year of Agricultural Land. Form 136.

1. An Agreement, made [*date*], between A. B., of the one part, and C. D., of the other part. Parties.

2. The said A. B. agrees to let, and the said C. D. to take, all that farm known as X. Farm, in the parish of Y., in the county of Z., the particulars of which are specified in the schedule hereto, now in the occupation of the said C. D., from [*date*] last (from which time he has had possession), for one year, and so from year to year, until such notice shall be given as hereinafter mentioned, at the yearly rent of £——, by half-yearly payments, on the [*date*] and the [*date*] in every year, the half-year's rent which became due on the [*date*] last to be paid within ten days next after the date hereof, and the next half-yearly payment of rent to be made on the [*date*] next. Term and rent.

3. The said C. D. will duly pay the said rent in the manner aforesaid, and also the land tax and all other rates, taxes, and other outgoings payable or charged on the landlord or tenant in respect of the premises (except landlord's property tax and tithes). Rent, rates, &c.

4. The said C. D. will also keep in good and tenantable repair and condition the fences, hedges, gates, stiles, and boundaries, and will scour out the ditches as often as the hedges shall be cut, and will not cut the hedges under seven years' growth, and will not cut, stock, or injure the timber or Repairs and cultivation.

Form 136.

timber-like trees, tellers, saplings, or trees likely to become timber, but use his best endeavours to preserve the same, and will dung, manure, and cultivate the land in a good and husbandlike manner, and not waste, destroy, impoverish, or make barren the same, and will deliver up the same accordingly at the determination of the tenancy.

Power to re-enter.

5. If the said rent, or any part thereof, shall be in arrear for twenty-one days, or if breach shall be made in any of the tenant's agreements aforesaid, it shall be lawful for the said A. B. to re-enter upon the premises and repossess the same, and remove the said C. D. and all other occupiers thereof.

Power to determine.

6. If the said A. B. shall be desirous that the said C. D. shall quit the premises, or if the said C. D. shall be desirous of quitting the same, then one half-year's notice shall be given by either party to the other, and until such notice shall be given this agreement shall be in full force.

In witness, &c.

[The above is a lease, and must be stamped as such.]

Form 137.

Concise Terms of Letting of a Farm, for printing at back of Receipt for Rent.[1]

The Conditions of your holding include the following:—

Reservations.

1. Landlord reserves—
   (*a.*) All game and exclusive right of sporting.
   (*b.*) All trees and liberty of felling them.
   (*c.*) All mines, quarries of stone, sand and gravel, with liberty to enter and get same, making fair compensation.

Tenant's obligations.

2. Tenant must—
   (*a.*) Manage land in husbandlike manner.
   (*b.*) Keep all buildings, fences, gates, and posts in good repair and all drains and ditches in repair and properly cleansed.

Restrictions.

3. Tenant must not—
   (*a.*) Convert any old pasture into tillage without landlord's previous written consent.

[1] Instead of having written farm agreements, it is on some estates usual to print at the back of the receipt for the rent the principal conditions on which the tenant holds; the above form is suitable for such a case.

(*b.*) Sell or remove any hay, straw, green crops or manure without landlord's previous written consent. Form 137.

(*c.*) On quitting remove any manure or claim any allowance for same.

4. LANDLORD— Landlord's duty and right.

(*a.*) Will supply materials in the rough for repairs.

(*b.*) May do at tenant's expense any repairs which tenant may make default in doing.

LEASE OF A SMALL FARM FROM YEAR TO YEAR—CONCISE FORM. Form 138.

1. THIS INDENTURE, made [*date*], between A. B., of, &c. (hereinafter called "the landlord"), of the one part, and C. D., of, &c. (hereinafter called "the tenant"), of the other part, WITNESSETH as follows :— Parties.

2. THE landlord demises to the tenant the farm described in the first schedule hereto, with the appurtenances (except the wood, mines, and minerals, and the right to cut, get, and carry away the same), as yearly tenant, as to the land from the 2nd of February, 1896, and as to the buildings from the 1st of May, 1896, at the yearly rent of £20, payable on the 21st of June. And also at the additional yearly rents specified in the second schedule hereto, such additional rents respectively to be payable immediately upon the doing of the several acts giving rise to the same respectively, and to be payable yearly during the rest of the tenancy. Term and rents

3. THE tenant covenants with the landlord to pay the rents aforesaid in the manner aforesaid, and all outgoings chargeable on the premises, and to observe all the stipulations contained in the third schedule hereto, and to keep the premises in good repair and condition, and to yield up the same at the determination of the tenancy, and not to underlet or assign, or part with possession of, the premises or any part thereof. Tenant's covenants.

4. THE landlord may at all times enter and inspect the premises, and may enter and determine the tenancy on breach of any of the tenant's covenants herein contained. Power to enter.

5. IF during the tenancy the landlord, his agent, heirs, or assigns shall distrain to obtain payment of rents hereby User of buildings on distress.

Form 138.

reserved, he or they may sell any crops distrained to be consumed upon the premises, and the purchaser or purchasers thereof shall have the use of the farm buildings for a reasonable time from such sale free of charge.

Covenant for quiet enjoyment.

6. The landlord covenants with the tenant that the tenant, observing his covenants herein contained, may occupy the premises without interruption by the landlord.

In witness, &c.

The First Schedule above referred to.

Parcels.

A farm and buildings called "C. Farm," situate in the township of H., in the county of York, containing by estimation nine acres, and consisting of house, farm buildings, yard, and four closes of land, called respectively, West Green, Middle Field, Belle Isle, and Low Pasture.

The Second Schedule above referred to.

Penal rents.

£15 yearly for every acre or part of an acre of meadow land ploughed or turned up, or sown with corn, grain, or roots.

£5 yearly for every acre, or part of an acre, of pasture land ploughed or turned up without the consent in writing of the landlord.

£5 yearly for every cartload, or part of a cartload, of hay, straw, grass, turnips, or manure, sold or carried off the premises.

£1 each for every horse, mule, foal, cow, calf, sheep, lamb, or other animal put upon the meadow or pasture lands during the last year of the tenancy more than the number usually kept upon such lands.

The Third Schedule above referred to.

Tenant's covenants.

To consume upon the premises all the hay, straw, clover, grass, roots, and fodder grown or produced on the premises. To cultivate the lands according to the most approved modes of husbandry. To spread upon the meadow land all ashes, manure, dung, muck, or compost made on the premises (except what is made during the last year of the tenancy, which shall be left in the usual dung or midden stead, free of charge, and which the landlord may cart or take away at any time during the last five months of the tenancy). To put at his own cost two tons of lime on the meadow or pasture land in each year if directed by the landlord.

LEASE OF A FARM AND COTTAGES IN YORKSHIRE. **Form 139.**

1. THIS INDENTURE, made, &c., between A. B., of, &c. (hereinafter called "the landlord"), of the one part, and C. D., of, &c. (hereinafter called "the tenant"), of the other part. Parties.

2. WITNESSETH, that the landlord hereby demises to the tenant, Testatum.

3. ALL that farm known as X. Farm, in the parish of Y., in the county of York, consisting of the farmhouse, farm buildings, and closes of land described in the schedule hereto. Parcels.

4. RESERVING unto the landlord all timber and other trees on the premises, and all stone and other minerals in or under the premises; AND the right at all times to enter and be upon the premises to mark, peel, cut down, lop, grub up, dispose of, and carry away the said timber and other trees, and to search for, get, dig for, dispose of, and remove the said stone and other minerals, and to inspect the premises, and to plant and prune trees, and alter, build and make fences and drains, and make improvements; AND also reserving unto the landlord, his heirs and assigns, all the game which during the said term may be in or upon the said premises, with exclusive liberty for him and them, and his and their gamekeepers, and all other persons by his and their permission, at all times to hunt, course, shoot, in or upon the premises.[1] Reservations.

5. To hold the premises (reserving as aforesaid) unto the tenant, for the term of five years, as to the land from the 2nd of February, 1896, and as to the buildings from the 1st of May, 1896. Term.

6. YIELDING and paying therefor unto the landlord the rents following; namely, Rent.

(*a.*) The yearly rent of £150, payable half-yearly on the [*date*] in every year, the first of such payments being due on the [*date*], and the last payment to be made in advance on the [*date*] next preceding the expiration of the said term.

(*b.*) The additional yearly rent of £5 for every £100, and so in proportion for any less sum which during the Additional rent for improvements.

[1] This does not preclude the tenant from killing hares and rabbits. See the Ground Game Act, 1880 (43 & 44 Vict. c. 47).

Form 139.

said term shall be expended by the landlord, with the consent of the tenant, in draining, fencing, and enclosing the premises, or any part thereof, or erecting buildings thereon, or otherwise improving the same, such additional rent to commence from such one of the said half-yearly days of payment as shall immediately precede the period at which such outlay shall be made, and the first payment thereof to be made on such one of the same half-yearly days of payment as shall first happen after such outlay, and to continue payable during the residue of the said term, and the last payment to be made in advance on the said [*date*] next preceding the expiration of the said term.

Proportionate rent on re-entry.

(*c.*) In the event of and immediately upon the said term being determined by re-entry under the proviso hereinafter contained, a proportionate part of the said several rents for the fraction of the then current half-year up to the day of such re-entry.

Penal rents.

(*d.*) The yearly rent of £10 for every acre of pasture land mown contrary to the covenants hereinafter contained, and £10 for every acre of land ploughed, or turned up, or sown with corn or other grain, or planted with esculent roots contrary to the covenants hereinafter contained, and £5 for every ordinary cartload of hay, grass, clover, straw, turnips, potatoes, or other esculent roots, fodder, bedding, manure, or compost, which shall not be eaten, consumed, laid, spread, bestowed, and spent in accordance with the covenants hereinafter contained, and so in proportion for any less quantity than an acre or a cartload; such last-mentioned additional rents to commence and be payable immediately after the same shall be incurred, and be recoverable by distraint as rent in arrear.

Tenant's covenants—

7. And the tenant hereby covenants with the landlord as follows:—

to pay rent, &c.;

(*a.*) To pay the rents hereby reserved on the days and in manner aforesaid, To pay the land tax and all rates, taxes, lords' rents and other outgoings (except property tax and tithes) which may become payable in respect of the premises or the occupation thereof.

Form 139.

(*b.*) To keep the premises, with all additions and improvements, in good condition and complete repair. — to repair;

(*c.*) To preserve all game upon the premises exclusively for the landlord, and all persons authorized by him or them, and to warn off the premises all trespassers thereon in pursuit of game, and immediately upon the discovery of each such trespass inform the landlord thereof, and of the name and address of each person committing such trespass, so far as the same can be ascertained, and to permit the landlord to bring any action or other proceeding in the name of the tenant, upon being indemnified against the costs thereof, against any person or persons who may trespass upon the premises in pursuit of game. — to preserve game;

[(*d.*) Not without the written consent of the landlord (and then only upon the terms and subject to the conditions expressed in such consent), to assign, underlet, or part with the possession of any of the premises (except the said cottages), or the winter eatage thereof, or any part thereof, or mow any of the pasture land hereby demised, or plough, or turn up, or sow with corn or other grain, or plant with esculent roots, any of the closes called [*insert names of permanent pastures*].] — not to underlet;

(*e.*) After taking a white crop from any of the lands, and before taking another white crop therefrom, to effectually clean and sufficiently manure the same lands, and take a grass crop therefrom. — to take alternate grass crops.

(*f.*) To mow or destroy in every year all docks and thistles and such like weeds on the premises before the same grow to seed. — to destroy weeds;

(*g.*) In all other respects to cultivate, manure, and manage the lands in a good and husbandlike manner, and according to the most improved system of agriculture, keeping them in good heart and condition, and in a perfectly clean state. — to cultivate well;

(*h.*) To observe every reasonable direction in writing as to the mode of cultivation, manuring and management to be given by the landlord, or his agent or steward. — to obey landlord's directions;

(*i.*) Not, without the written consent of the landlord (and then only upon the terms and subject to the conditions expressed in such consent), to sell, give, exchange or carry away, or suffer to be sold, given, exchanged or — not to sell crops;

Form 139.

carried away from the premises, or advertise or offer or suffer to be advertised or offered for sale, exchange or gift (except upon the terms that they shall be consumed on the premises) any hay, grass, clover, straw, turnips, potatoes, or other esculent roots, fodder or bedding, grown, gathered or brought on the premises, or any manure or compost arising from the same hay, grass, clover, straw, turnips, potatoes or other esculent roots, fodder or bedding, or otherwise made or gathered on the premises, but to eat, spend, and consume on the premises the same hay, grass, clover, straw, turnips, potatoes and other esculent roots, fodder and bedding, and lay, spread, bestow, and consume the same manure and compost upon some part of the meadow land at proper times and in a husbandlike manner.

to leave manure and give up farm at end of term.

(*j.*) At the expiration or sooner determination of the said term, to leave in the yards of the premises for the use of the landlord, or his incoming tenant, and without compensation therefor, all such of the said manure and compost, both liquid and solid, as shall not have been laid and spread pursuant to the covenant in that behalf hereinbefore contained, and yield up the said premises, with all additions thereto and improvements thereon, in such good condition and complete repair, and in fair and proper order, as aforesaid, unto the landlord, without receiving or requiring or being entitled to any valuation, allowance, remuneration, or compensation for tenant-right, tillage, labour or improvements in or on or additions (if any) to the premises.

Provisoes—

8. PROVIDED ALWAYS, and it is hereby agreed as follows:—

Power to re-enter.

(*a.*) If and whenever any part of the rents hereinbefore reserved shall be in arrear for twenty-one days, whether the same shall have been legally demanded or not, or if and whenever the tenant shall be adjudicated bankrupt, or take proceedings for liquidation by arrangement or composition, or compound with his creditors, or any execution shall be levied upon him or his goods or chattels or upon the premises, or if and whenever any breach shall be made by the tenant of any of the covenants or conditions herein contained, the landlord may re-enter upon the premises

and repossess and hold the same as if this demise had not been made.

Power to enter and prepare crops during last five months.

(*b.*) The landlord or his incoming tenant may, at any time after the month of December next preceding the expiration or determination of the said term, enter upon the premises, and carry, cart, lead, spread and bestow into and upon the lands hereby demised any dung, compost or manure, and plough and do all other acts of husbandry for preparing the crops of the succeeding year.

Power to use buildings on distress.

(*c.*) If, during the said term, the landlord shall distrain upon the premises in order to obtain payment of the rents hereby reserved, or any part or parts thereof, he or they may sell and dispose of any crops distrained upon to be consumed on the premises, and for this purpose the person or persons purchasing the same shall have reasonable use and occupation of the demised farm buildings for three calendar months next following the time of such sale.

Power to take land for planting, &c.

[(*d.*) The landlord may, at any time during the said term, resume possession of any part or parts of the premises which may be required for planting, building, change of occupation, or any other purpose, making compensation in respect thereof to the tenant, either by payment of a sum in gross, or by a reduction of rent, or by a demise of other lands in lieu of what may be so taken, and in case possession of any part or parts of the premises shall be so resumed, the provisions herein contained with reference to the whole of the premises shall, so far as the same may be applicable, continue in force and apply to such part of the same as shall be left in the possession of the tenant, in the same manner as if such part only had originally been included herein, and the reduced rent or rents (if any) had been herein inserted instead of the principal rent hereby reserved.[1]]

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[1] Instead of this clause the following may be used:—

PROVISO IN LEASE REQUIRING LESSEE TO GIVE UP ANY PART OF DEMISED PREMISES ON NOTICE FROM LESSOR.

(*d.*) [In case the [*lessor*] shall at any time during the said

Form 139.

Arbitration.

(*e.*) If any dispute shall arise between the parties hereto, or their respective heirs, executors, administrators, or assigns, or any of them, touching any clause, matter, or thing herein contained, or the construction hereof, or anything to be done under any of the provisions herein contained, or any matter in any way connected with the operation hereof, or the rights, duties, or liabilities of either party in connection with the premises, then and in every such case the matter in difference shall be referred to two arbitrators or their umpire, pursuant to the Arbitration Act, 1889.

Landlord's covenant.

9. THE landlord hereby covenants with the tenant that he paying the rent hereby reserved, and performing and observing the several covenants by the tenant hereinbefore contained, may peaceably hold and enjoy the premises during the said term, without any interruption by the landlord, or any person lawfully claiming through or in trust for him.

IN WITNESS, &c.

Form 140. CONDITIONS ON WHICH BUILDING LEASES WILL BE GRANTED FOR TERMS OF 999 YEARS.

Plan.

1. THE plot to be leased will be surveyed and staked out by the lessor's surveyor, and at his expense, and a plan thereof

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term be desirous of having any part, not exceeding [four] acres of the land hereby demised delivered up to him, and of such desire shall give three calendar months' notice in writing to the [*lessee*] at his last or usual place of abode, or upon the demised premises, then at the expiration of such notice the [*lessee*] will yield up and surrender such part or parts of the said pieces of land as shall be mentioned in such notice as aforesaid, the [*lessor*] paying to the [*lessee*] a reasonable compensation in respect of the moneys which may have been laid out by the [*lessee*] in improving the condition of so much of the said land as shall be so given up, and thenceforth the rent reserved by this indenture shall be reduced at the rate of £2 for each acre (and so in proportion for a less quantity than an acre), of the said land that may be so given up.]

(afterwards called the plan) will be signed by the lessor or his agent, and delivered to the lessee when he is let into possession. The plan will contain as far as possible the following particulars :— Form 140.

The dimensions, contents, and boundaries of the plot.

The number and yearly letting value of houses to be erected on the plot, and how they may be built, whether detached, semi-detached, or in blocks.

The annual ground rent to be paid by the lessee.

The day for payment of the first half-year's rent; and

Such other particulars as the lessor may think necessary.

2. Before the erection of any building is commenced, plans, sections, elevations, and specifications thereof to be submitted to and approved of and signed by the lessor or his agent, and copies left at the ——— Park Estate Office for the use of the lessor and his agent. Approval of plans.

3. The lease to contain a reservation of mines and minerals and of power to obstruct windows by building on adjoining land of the lessor. Reservation.

4. The plot to be enclosed by the lessee with a substantial fence when required by, and to the satisfaction in all respects of, the lessor. Fencing.

5. Within one year after entry a substantial dwelling-house or substantial dwelling-houses, of the clear yearly letting value of at least three times the ground rent, to be erected and finished on the plot to the satisfaction of the lessor, and in accordance with the plans, sections, elevations, and specifications approved of as aforesaid. Building.

6. No dwelling-house at any time to be on the plot of less clear yearly letting value than the sum fixed in that behalf and marked on the plan, or if not so marked, than the sum of £25. No building to be erected beyond the building line or lines (if any) shown on the plan. The back of every building, and all outhouses, offices, yards, and cesspools, to be on such side of the plot and in such situation as shall be fixed by the lessor or his agent. Covered cesspools to be made in cases where sufficient sewerage is not immediately available. Value of buildings, &c.

7. Unless otherwise stated on the plan, every building to be erected on the plot to be used only as a private dwelling-house, or as offices, or an outbuilding of or to such private dwelling-house. User.

Form 140.

Streets, &c. 8. No portion of the intended streets and passages adjoining the plot to be included in the lease, but the lessee to pay a proportionate part (to be fixed by the lessor) of the expenses of forming, flagging, paving, and repairing such streets and passages, and of making and repairing sewers thereunder, and of the expenses of providing and keeping in repair any outlet sewer which the lessor may consider necessary.

Lease. 9. A LEASE to be granted when the buildings are erected and slated to the satisfaction of the lessor, and in accordance with the plans, sections, elevations, and specifications approved as aforesaid.

Preparation of lease. 10. THE lease (and also a counterpart thereof) to be prepared by the lessor's solicitors at the lessee's expense; such lease and (as far as applicable to circumstances) the covenants, power of entry and perception of rents, qualified power of re-entry, and other clauses therein, to be in the form approved of by the lessor's solicitors. The lessee to enter into covenants for giving effect to the conditions above expressed (subject to any variation thereof which may be stated on the plan); also into covenants for preventing annoyance or nuisance to adjoining property, and for the maintenance of dwelling-houses of the clear yearly letting value of at least three times the ground rent, and such other covenants as the lessor's solicitors shall determine.

Default. 11. IN case of any breach or non-observance by the lessee of these conditions, the lessor to be at liberty to break off the negotiation for a lease, and to turn the lessee out of possession without notice and without making any compensation for the works (if any) previously done by him on the plot, or for any building materials found on the plot.

Form 141. BUILDING LEASE WITH USUAL CLAUSES AND RESERVATION OF WATER IN A WELL.

Parties. 1. THIS INDENTURE, made [*date*] between A. B. (hereinafter called "the lessor"), of the one part, and C. D. (hereinafter called "the lessee"), of the other part.

Testatum. 2. WITNESSETH, that, in consideration of the rent, covenants, and conditions hereinafter reserved and contained, the lessor hereby demises unto the lessee,

Parcels. 3. ALL that plot of land situate at, &c., and which plot

forms part of a piece of land called, &c., and contains in the whole by admeasurement —— square yards or thereabouts, and is delineated in the plan drawn in the margin hereof, and therein coloured pink and blue, together with the appurtenances to the same belonging. **Form 141.**

4. Except and reserving to the lessor all minerals lying within or under the said plot, with liberty to search for, get, and remove the same, but so that the surface of the said plot and the space of ten yards next below such surface be not entered, broken, or otherwise damaged or injured, and that compensation be made for all damage or injury to the said plot or any building or erection for the time being thereon: And also the free running of water and soil from any hereditaments adjoining or near to the said plot to which the lessor shall for the time being be entitled for any estate or interest in and through the sewers, drains, and channels for the time being in, upon, or under the said plot, or any part thereof, with liberty at all times to enter upon the same plot to cleanse, renew, and repair the said sewers, drains, and channels. [Except also and reserved unto the lessor his heirs and assigns, and the occupier and occupiers of the premises coloured green on the said plain, full and free liberty of ingress, egress, and regress in, to, from, and out of the said pieces of land, coloured blue on the said plan, to take in common with the lessee, and his and their under-tenants of the premises hereby demised, the water from the well therein sunk, and to sink any other well or wells, and make any tank or reservoir in or upon the said pieces of land coloured blue, and to take and lay down any pipes or aqueducts in and through any part or parts of the premises hereby demised, not being the site of any building, for conveying the water therefrom in order to supply with water any other messuages of the lessor.] Reservations.

5. To hold the premises hereby demised with their appurtenances unto the lessee for the term of ninety-nine years from the date hereof; Term.

6. Yielding and paying therefor [*reservation of rent as in Form* 133, p. 434]. Rent.

7. And the lessee hereby covenants with the lessor as follows:— Lessee's covenants—

(*a.*) [*To pay rent, rates, &c. as in Form* 133, p. 434.] to pay rent, &c.

Form 141.

to build;

(*b.*) At his cost, within two years from the date hereof, in a good, substantial and workmanlike manner [to the satisfaction of the lessor's surveyor], to build and completely finish, fit for habitation and use, upon the land hereby demised, one or more messuage or messuages, to be built with the best sound material of all sorts, and to roof and cover in such messuages with good blue slate; and also to fence off the land hereby demised, on the [north and east] sides thereof, with a good brick wall, six feet in height at the least, from other parts of the land adjoining, and to make no door or other communication from the [N. and E.] sides of the premises hereby demised to the lands immediately adjoining thereto; such messuage or messuages, when so built as aforesaid, to be worth, to let to a tenant or tenants by the year, not less than double the amount of the yearly rent hereby reserved.[1]

to repair and deliver up;

(*c.*) As occasion shall require, during the said term, to well and sufficiently repair, maintain, pave, cleanse, amend, and keep the premises, with the appurtenances, in such good and substantial repair as is necessary for the occupation of a tenant or tenants at rack rents; and the premises, being in all things repaired, maintained, paved, cleansed, amended, and kept as aforesaid, at the end or sooner determination of the said term, to quietly yield up unto the lessor, together with all chimney-pieces, windows, doors, fastenings, water-closets, cisterns, partitions, fixed presses, shelves, pipes, pumps, rails, locks and keys, and all other things which at any time during the last seven years of the said term shall be fastened to the demised premises and come within the denomination of fixtures.

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[1] The following additional clause may be inserted:—

(*b* 1.) In the erection of such messuage or messuages as aforesaid to conform to the building line shown on the said plan, and to construct such messuage or messuages in all respects in accordance with such plans and elevations as shall have been approved of by the lessor's surveyor.

Form 141.

(*d.*) That the lessor, and any persons deputed by him, at any reasonable hours in the daytime, during such last seven years, may enter upon all and every the demised premises, and take a schedule or schedules of the same fixtures and things respectively. — to permit entry;

(*e.*) [*To paint, as in Form* 133, p. 434.] — to paint;

(*f.*) [On demand, to pay to the lessor one-half the expense of making and forming an intended new street of ten yards wide, and now forming part of other land belonging to the lessor; and also of making a covered drain or drains, from the front of the said messuage or messuages, and leading to the common sewer: And to bear the like proportion of laying down and paving the said street, so far as the same shall run co-extensively with the premises hereby demised, such street, drain, and pavement to be made to the satisfaction of the surveyor for the time being of the lessor.[1] — to pay half cost of street and drains;

[1] Compare the following alternative covenants:—

(*f* 2.) At all times during the said term to keep open and free from obstruction the halves hereby demised of the streets [and passage] shown on the said plan and permit the same to be used for all purposes as public streets [and a public passage]: And at his own expense to make, form, and complete all the roadways and footways of the said halves of the said streets [and passage] with all proper main sewers, drains, and channels, and works connected therewith, in, through, under, and upon the same respectively, on such levels, with such materials, at such times, within such periods, and generally in such manner (but not so as to infringe or contravene any bye-law, rule, or regulation of the local sanitary authority for the time being in force in respect of such matters) as the lessor or his surveyor shall require by any notice or notices in writing, either containing special directions or referring to general directions, deposited at the office of such surveyor or at some other place specified in such notice or notices, and at all times during the said term, after the said roadways, footways, main sewers, drains,

Form 141.

to pave;

(*g.*) At his own cost, and to the satisfaction of the lessor, to pave with good flagstones the footways to be made

channels, and other works shall have been made, formed, and completed, and until the same shall become repairable by some public body or local authority, to maintain the same in good and complete repair and free from obstruction to the satisfaction of the lessor or his surveyor: And on demand to pay to the lessor all moneys which shall be paid by the lessor to any local authority in or towards satisfaction of any charge upon the said plot to which such authority shall for the time being be entitled in respect of any expenses incurred by such authority, and for the repayment whereof to such authority the lessee shall hereunder or otherwise be liable (and as to such payment the lessor shall have an absolute discretion), and all costs incurred by the lessor in relation thereto and in consequence of the non-payment thereof by the lessee, and also all expenses incurred by him in erecting or maintaining a boundary fence (which may be done by him if the lessee fail to perform his covenant in that behalf hereinbefore contained) or in making, forming, completing, or maintaining as aforesaid the said halves of the said streets [and passage], and the said sewers, drains, channels, and other works (all which may be done by the lessor if the lessee fail to perform his covenant in that behalf hereinbefore contained, or at the option of the lessor in lieu of requiring the lessee to perform such covenant), and also a proportionate part of the expenses already or hereafter to be incurred by the lessor in or about providing and maintaining and cleansing (if and so long as the same shall not be maintained and cleansed by some public body or local authority) an outlet or outlets for the main sewers, drains, and channels in, through, under, and upon the said plot, and the sewers, drains, and channels in, through, under, and upon neighbouring land, the amount of all which expenses and part of expenses shall be conclusively settled by the lessor's surveyor, and that all moneys, expenses, and part of expenses which shall

Form 141.

on the side of the said intended new street as aforesaid before the fronts of the said messuages, and lay down edging stones to the aforesaid footpaths respectively, so far as such footpaths run co-extensively with the hereby demised premises, and during the said term to repair and keep in repair the whole of the said footpaths in the front of the said messuage or messuages so far as the same run co-extensively with the premises; and also to pay and discharge one-half of the expenses of making, supporting, repairing, and amending all party walls and gutters, which during the said term shall belong to the premises, or which shall be used in common by the lessee, and the takers or occupiers of the adjoining or contiguous property respectively.]

to permit entry and repair on notice.

(*h.*) That it shall be lawful for the lessor [*to enter, view, and give notice to repair, as in Form* 133, p. 435].

not to permit offensive trades;

(*i.*) [Not to exercise, or carry on, or permit or suffer to be exercised or carried on, upon any part of the premises hereby demised, the trade of a boiler of horse-flesh, slaughterman, soap maker or boiler, melter of tallow, distiller, brewer, victualler, beer-shop or ale-house keeper, blacksmith, boiler maker, or any other noisome, dangerous, noisy, or offensive trade or business whatsoever, without the express consent in writing of the lessor, nor do, or cause or knowingly suffer to be done, any act or thing on the demised premises which may grow to the annoyance, damage, or disturbance of the lessor or his tenant or tenants.][1]

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become payable by the lessee under the covenant lastly hereinbefore contained shall, until paid, be a charge upon the said plot, and if not paid by the lessee within ten days after demand by notice in writing, the same shall carry interest at the rate of £5 per cent. per annum from the date of demand, and with such interest be recoverable under or by virtue of the said charge, or by distress or otherwise as if the same were rent payable on the date of such demand as aforesaid.

[1] Compare the following alternative provisions:—

(*i* 1.) That no sale by retail of intoxicating liquors, and no

Form 141.

to insure and rebuild;

to give copies of assignment, and not to assign during last seven years.

(*j.*) [*To insure and rebuild, as in Form* 133, p. 434.]

(*k.*) In case the lessee shall sell, assign, or underlet the land hereby demised, or any part thereof, or part with this indenture, then, and in any or either of the said cases, within twenty-one days thereafter to deliver a true copy of such assignment, underlease, or other assurance to the lessor; [and not during the last seven years of the said term to sell, assign, demise, or make over or part with the premises or any part thereof, for all or any part of the residue of the said term, without the consent in writing of the lessor.]:

8. PROVIDED ALWAYS [*power of re-entry on non-payment of rent or breach of covenant, as in Form* 133, p. 436].

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offensive, noisy, or dangerous business or occupation, and no thing which shall be or become a public or private nuisance, or a damage, annoyance, grievance or inconvenience to the lessor or any occupier of neighbouring land or buildings [or which may lessen the value of any such land or buildings] shall be made, carried on, or done or suffered on the said plot (but the user of the building now in course of erection on the said plot as an artist's studio shall not be deemed to constitute a breach of this covenant): And in particular that no placard or advertisement shall be affixed to or painted upon the outside of any boundary, fence, building, or erection upon the said plot.

(*i* 2.) That there shall not be done, carried on, or suffered in or upon the said plot any thing which shall be a grievance or annoyance to the lessor or any occupier of adjoining land or buildings, or any business, profession, or occupation whatever, except that of a medical practitioner or grocer (not being a retailer of intoxicating liquors), mercer, draper, or stationer [or a business, profession, or occupation not interfering more with the character, quiet, and comfort of a private dwelling-house than any business, profession, or occupation hereinbefore expressly excepted], and except such other business, profession, or occupation (if any) as the lessor shall in writing previously consent to.

9. And the said A. B. [*covenant for quiet enjoyment, as in Form* 133, p. 436].[1] Form 141.

In witness, &c.

Agreement for Tenancy of Cricket and Football Ground—Concise Form. Form 142.

1. An Agreement made, &c., between A. B., of, &c. (hereinafter called "the landlord"), and C. D., of, &c. (hereinafter called "the tenant"), whereby— Parties.

2. The landlord agrees to let, and the tenant agrees to hire, the plot of land edged red on the plan drawn hereon, and situate on the west side of —— Road, in the parish of X., on the following conditions:— Agent.

3. The tenancy is to be yearly, from the 15th of March, 1896, determinable by either party at the end of any year by six calendar months' previous written notice being given to the other, or determinable by the landlord at any time by giving to the tenant one calendar month's previous written notice if the property is required by the landlord for building Term.

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[1] The following provisions are sometimes useful:—

Nothing herein contained shall oblige the lessor to lay out or form into streets or a passage the halves [parts] of the said streets and passage which are not hereby demised until such time as he shall think fit.

The lessor shall have the exclusive right of dedicating to the use of the public all streets and passages and parts of streets and passages for the time being upon the said plot if and when he shall think fit.

The lessor may sell or lease any land adjoining or near to the said plot, free from any obligations or restrictions similar to the obligations and restrictions intended to be hereby imposed in respect of the said plot, and any obligations or restrictions in relation to any such adjoining or neighbouring land may be wholly or partially released, or any breach thereof waived, without thereby releasing the lessee from any of the covenants or provisions herein contained, or giving to the lessee any right of action against the lessor or any other person or persons whomsoever.

Form 142. purposes, or if any condition of the tenancy is broken by the tenant.

Rent. 4. The rent is to be the nett sum of £20, payable half-yearly on every 15th of March and 15th of September, and the first half-year's payment to be made on the 15th of September, 1896.

Fences. 5. The Fences to be kept in good repair by the tenant.

Prohibition. 6. Prohibited acts which the tenant agrees shall not take place are :—

(*a.*) The using of the property or any part thereof for any purpose except that of a cricket and football ground, or for the excepted purpose by any other persons or club not actually playing with or against the X. Cricket Club or the X. Football Club.

(*b.*) The fixing or displaying of any bill, placard, or advertisement to or on any structure or fence on the property.

(*c.*) The sale or retail of any intoxicating liquors on the property.

(*d.*) The demanding or receiving of money from any person for coming to the property other than the subscription payable by a member of the said club.

(*e.*) The permitting or suffering of betting or gambling on the property.

(*f.*) The assigning or underletting of the property or any part thereof without the landlord's previous written consent.

As witness, &c.

Form 143. Agreement for Tenancy of Land for a Football Ground during Winter Season.[1]

Parties. 1. An Agreement made [*date*] between A. B., of, &c. (hereinafter called "the landlord"), and C. D., E. F., and G. H., all of, &c. (hereinafter called "the tenants").

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[1] Football and other clubs hire a piece of land for the season only, and object to pay more than a nominal fee for an agreement. In these cases the agreement may be written on the plan of the land, and may be in the following form :—

Memorandum : That the plot of land in the parish of X. shown as edged red in the above plan, is this 15th of Sep-

Form 143.

2. THE LANDLORD agrees to let and the tenants agree to take [*insert description of field by reference to a plan or otherwise*]. Agreement.

3. THE tenancy to be for the winter season, commencing on the 15th of September, 1896, and terminating on the 15th of April in the following year, and so on from winter season to winter season (each such season commencing on the 15th of September in one year and terminating on the 15th of April in the following year) up to and including the 15th of April, 1899,[1] unless determined at any previous time by four weeks' previous notice in writing given by the landlord or his agent, or left on the property, if any condition of the tenancy shall not be observed by the tenants. Term.

4. THE TENANTS to have no estate, or interest in, or right to use the property, or any part thereof, for the period commencing on the 16th of April and ending on the 14th of September in the same year, or for any part of such period. Exception.

5. THE RENT to be the clear sum of £10 for each winter season, and such season's rent to be paid in advance on the first day of the season. Rent.

6. THE TENANTS to pay all rates and outgoings payable for the property during the winter season of each year, and if such rates or outgoings shall be payable for a greater part of the year and the tenants shall not be assessed separately from the landlord by the proper authority, then, if any question shall arise as to the proportion payable by the tenants, such question shall be settled by the landlord's agent, whose decision shall bind both parties. Rates.

7. THE FENCES are to be put into repair by the landlord at the commencement of each winter season, and afterwards throughout such season the fences are to be kept in repair by the tenants. Fences.

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tember, 1896, let by A. B., of, &c., to C. D., of, &c., for a term commencing on this day and ending on the 15th of April, 1897, at the rent of £——, payable on [*date*], and on these conditions, viz.:—[*add such of the numbered clauses from Form* 142 *or* 143 *as may be required*].

[1] [*Or, if no time is fixed, say*, until determined at the end of the first or any subsequent season by three calendar months' previous notice in writing given by the landlord (or his agent) or the tenants to the other of them, or (if given by the landlord or his agent) left on the property.]

Form 143.

User.

8. THE TENANTS are not to use, or permit or suffer to be used, the property, or any part thereof, for any purpose other than as a football ground or for grazing sheep, nor for a football ground, except on Saturday afternoons and general holidays, nor for a football ground by any person or persons not being a member or members of the X. Football Club or not engaged in playing football with or against such member or members.

To keep as pasture.

9. THE TENANTS are not to plough, break up, or burn, or permit or suffer to be ploughed, broken up, or burnt, the property, or any part thereof, but to use the same for football or grazing purposes in such a careful and reasonable manner as that, at the end of each winter season, the same shall be in fair condition as pasture land.

Restrictions.

10. THE TENANTS are not to charge or receive any money or other payment (other than the annual subscription payable by members of the X. Football Club) from any person or persons for admission to the property, and are not to fix or exhibit, or suffer to be fixed or exhibited, any bills or placards on any part of the property, and are not to sell or retail, or permit to be sold or retailed, any intoxicating liquors on any part of the property, and are not to assign, underlet or part with the possession of the property.[1]

AS WITNESS, &c.

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[1] The following proviso is reasonable, and might fairly be added:—

EXCEPT that the premises may be assigned so as to vest in the persons for the time being holding the offices of the president, treasurer, and secretary of the X. Football Club (of which the said C. D., E. F., and G. H. are the present president, treasurer, and secretary) for the residue of the term hereby created; and if within twenty-one days after the execution of the instrument by which the premises shall be so assigned, a copy of such instrument shall be delivered to the lessor or his agent, and such instrument shall at the same time be produced to the lessor or his agent, then, as respects any subsequent breach, of any of the said conditions and the liability in reference to such breach, the liability of the present tenant shall cease, but as respects the persons to whom the said premises shall be so assigned shall remain in full force.

LICENCE TO USE LAND FOR PLAYING GOLF. Form 144.

To [*names and addresses*], being some of the members of the X. Golf Club.

I, A. B., of, &c., hereby give my licence and permission to you and the other members for the time being of the above club and the friends and guests of such members to use the land of which I am now tenant [*describe it*] for the purpose of playing thereon the game of golf, upon the following conditions:—

1. The licence is not to give to you or the club any estate or term in the land, or any right to kill or take any game or rabbits thereon, and is not in any way to interfere with my full right to use the land as pasture and to have thereon at all times as many [horses, cattle, and] sheep as I think fit, and to shoot or otherwise destroy or take all game and rabbits thereon.
2. You are to pay to me the yearly sum of £—— by equal half-yearly payments, on [*dates*], the first of such payments to be made on [*date*].
3. You are not, nor is any other member of the club, to use, or authorize any other person or persons to use, the land, or any part thereof, for any purpose other than that of playing golf, nor to shoot or otherwise destroy or take any game or rabbits thereon.
4. You are not, nor is any other member of the club, to disturb or otherwise injure, or allow to be disturbed or otherwise injured, the land, or any part thereof, as pasture land to any greater extent than may be necessary for using the same for playing golf, and no bunkers are to be made without my written permission.
5. Before the determination of the licence you are to make good to my satisfaction all damage caused to the land, or any part thereof, by the construction of mounds or bunkers.
6. The licence is to remain in force for seven years from [*date*] unless determined by me at any previous time by giving twenty-one days' notice to you, or any of you, or to any official of the club, or fixing a written

Form 144.

notice to that effect on any building or fence on the land in any of the following events:—

(*a.*) If any sum hereinbefore made payable is wholly or in part in arrear; or

(*b.*) If I shall receive from my landlord notice to quit, or my tenancy of the land shall otherwise determine; or

(*c.*) If and whenever there shall be a breach of any condition on which the licence is given.

Dated this, &c.

We accept the above licence upon and subject to the above conditions. Dated, &c.

Form 145.

SURRENDER OF LEASE BY INDORSEMENT.

Parties. 1. THIS INDENTURE, made [*date*] between the within-named C. D., of the one part, and the within-named A. B., of the other part:

Testatum. 2. WITNESSETH, that, in consideration [of £ —— now paid by the said A. B. to the said C. D. (the receipt whereof is hereby acknowledged) and] of the release hereinafter contained, the said C. D., as beneficial owner, hereby surrenders unto the said A. B.

Parcels. 3. ALL and singular the hereditaments comprised in and demised by the within-written indenture,

Habendum. 4. To the intent that the residue of the term of —— years created by the within-written indenture may merge in the reversion expectant thereon, and be extinguished.

Release from breaches of covenant. 5. AND the said A. B. hereby releases the said C. D. and his estate and effects from all actions, proceedings, damages, claims, and demands in respect of all [past and] subsisting breaches of all or any of the lessee's covenants or conditions contained in the within-written indenture.

IN WITNESS, &c.

AGREEMENT FOR DETERMINING A FARM TENANCY AND SETTLING CLAIMS BETWEEN LANDLORD AND TENANT —CONCISE FORM. **Form 146.**

1. AN AGREEMENT made the, &c., between A. B., of, &c., and C. D., of, &c. Parties.

2. THE tenancy of the farm at X. belonging to A. B., and occupied by C. D. as tenant, is hereby determined, and A. B. is to have immediate possession of the whole of the farm, except the fields known as [*specify their names*]. Term determined.

3. C. D. is to retain possession of the said excepted fields known as [*specify their names*] up to the [*date*] next, and on that day to give possession thereof to A. B. Fields to be retained by tenant.

4. A. B. is to pay to C. D. on the [*date*] next, the sum of £——, and C. D. is to accept that sum in satisfaction of all claims to compensation, and other claims (if any) on his part arising out of or connected with the tenancy. Payments by landlord.

5. A. B. is to accept possession as aforesaid in satisfaction of all claims he may have against C. D. arising out of or connected with the tenancy.[1] Release.

AS WITNESS, &c.

AGREEMENT SUBSTITUTING A NEW TENANT IN PLACE OF ONE OF SEVERAL. **Form 147.**

WE mutually agree that from the [*date*] last, the within-written agreement shall be construed and take effect as if the name of the undersigned E. were inserted therein throughout, and such agreement were signed by him instead of the name and signature, respectively, of the undersigned B., to the intent that from the date aforesaid the undersigned C., D., and E. shall be the tenants under the said agreement.

Dated, &c.[2]

[1] It may be necessary occasionally to provide for manure, &c., being left for landlord, also to have a surety for tenant.

[2] To be signed by—A. (*landlord*).
B. (*retiring tenant*).
C. } (*continuing tenants*).
D. }
E. (*new tenant*).

Form 148. EXTENSION OF LEASE FOR FURTHER TERM AT INCREASED RENT BY INDORSEMENT.

IT is hereby agreed that the within-written indenture is to be construed and take effect as if the term of years created in the within described hereditaments by virtue of such indenture [and the memorandum in writing dated, &c.] expired on the 25th of December, 1900, and as if the yearly rent reserved by such indenture had, after the 25th of December, 1893, been £17 instead of £7.

Dated this —— of —— 1893.[1]

Form 149. RENEWAL OF LEASE BY INDORSEMENT.

Parties. 1. THIS INDENTURE, made, &c., between the within named A. B., of the one part, and the within named C. D., of the other part.

Testatum. 2. WITNESSETH that the said A. B. hereby demises unto the said C. D. the hereditaments comprised in and described by the within written indenture.

Habendum. 3. TO HOLD the same unto the said C. D. for —— years from the —th of ——, 18—, at the like yearly rent payable on the like days, and subject to the like exceptions, covenants, power of re-entry, and other provisions as are within reserved and contained.

Covenant by lessee. 4. AND the said C. D. hereby covenants to perform and observe the lessee's covenants and conditions within contained.

Proviso. 5. PROVIDED ALWAYS that this demise shall determine if and so soon as the said term shall be determined, under the within power of re-entry.

IN WITNESS, &c.

[1] It should be seen that all repairing covenants have been performed, and it may be desirable to notice any special power given to the tenant to remove fixtures, &c.

LICENCES.

Licence by Lessor to Assign Lease.

Form 150.

Whereas by indenture dated, &c., and made between the undersigned A. B., of the one part, and C. D., of the other part, the said A. B. demised to the said C. D. certain hereditaments situate in the parish of X., in the county of Y., for the term and at the yearly rent therein mentioned, and the said C. D. thereby covenanted that he would not assign, demise, underlet, or otherwise part with the possession of the premises without the licence in writing of the said A. B.: Now the said A. B. hereby gives licence unto the said C. D. to assign the said lease and all his estate and interest therein unto Y. Z., of, &c.[1]

Licence by Lessor to Lessee to permit Sale by Auction.

Form 151.

Whereas by indenture of lease dated the, &c., made between the undersigned S. B., of the one part, and J. H., of the other part, the said S. B. demised the hereditaments therein mentioned to the said J. H. for the term and at the yearly rent therein mentioned; and the said J. H. thereby covenanted that he would not permit or suffer any auction or sale to be made in or upon the premises without the licence in writing of the said S. B.: Now the said S. B. hereby gives licence unto the said J. H. to make sale by auction of the said lease and also of his present household goods, furniture, and effects in and upon the premises within [six] weeks from the date hereof; nevertheless the licence hereby given shall not extend to permit the said J. H. to make any future sale in or upon the demised premises without the like licence of the said S. B.

Dated, &c.

[1] Lord St. Leonards' Act (22 & 23 Vict. c. 35), § 1, enacts that such a licence as the above shall only extend to the particular assignment mentioned in the licence.

MORTGAGES.

Form 152. SHORT EQUITABLE MORTGAGE AND AGREEMENT FOR LEGAL MORTGAGE WITH DECLARATION OF TRUSTEESHIP.

To A. B., of, &c.

I HEREBY CHARGE the land in X. comprised in a lease dated, &c., from Y. Z. to me for ninety-nine years (which I have this day deposited with you), with the payment to you of the sum of £500 this day advanced by you to me, and of £300 now owing by me to you for previous advances (making £800), and any further advances you may make to me with interest at £4 per cent. per annum, calculated on the said sum of £800 from this day, and on the further advances from the time of the advances being made, such interest to be paid half-yearly, which sums and interest I agree to pay, and at your request and my cost to execute to you a mortgage of the premises for such term and in such form as you may reasonably require.

AND I HEREBY declare that I will during the continuance of this security hold the land comprised in the said lease in trust for you and to assign the same as you may direct. And I authorize you at your discretion by deed to remove me from such trusteeship and to appoint a new trustee in my place, and, on such appointment, to vest the premises in such new trustee by declaration pursuant to the Trustee Act, 1893.[1]

Form 153. AGREEMENT TO EXECUTE A MORTGAGE TO SECURE A PRESENT LOAN AND FURTHER ADVANCES (TO BE WRITTEN AT FOOT OF DRAFT MORTGAGE).

IN CONSIDERATION of £500 this day paid to me by the above-named C. D. (the receipt of which I hereby acknowledge), I hereby agree with him as follows:—

1. To use my best endeavours to obtain from E. F.,

[1] As to the validity of this clause, see *London and County Banking Co.* v. *Goddard*, (1897) 1 Ch. 642.

referred to in the foregoing draft, or his successor in title, a conveyance of the above described land. **Form 153.**

2. To deliver such conveyance, immediately on receipt thereof, to the said C. D. or to his solicitors on his behalf.

3. When required at my expense to execute and deliver a mortgage of the same land to the said C. D. in the form of the foregoing draft (with such alterations, if any, as may be rendered necessary by intervening circumstances, or as he may reasonably require).

4. In the meantime the same land, and all my estate and interest therein, shall be and remain charged with the payment to the said C. D. of the said sum of £500, with interest thereon at the rate of £4 per cent. per annum from this date, and all such other moneys (if any) as may be advanced by him to me or on my account or may become due to him by me, with interest thereon at the rate aforesaid from the times of the same, respectively, being advanced or becoming due.

Dated, &c.

Mortgage of Freehold Houses to one Mortgagee. **Form 154.**

1. This Indenture, made, &c., between A. B., of, &c. (hereinafter called "the mortgagor"), of the one part, and C. D., of, &c. (hereinafter called "the mortgagee"), of the other part. Parties.

[2. Whereas the said A. B. is seised in fee simple of the hereditaments hereinafter described; Seisin of mortgagor.

3. And whereas the said C. D. has agreed to lend the said A. B. £200 on having the repayment of the same with interest secured as hereinafter appears. Agreement for loan.

4. Now this Indenture][1] witnesseth, that in consideration of £200 to the mortgagor paid by the mortgagee (the receipt whereof the mortgagor hereby acknowledges), the mortgagor hereby covenants with the mortgagee that the mortgagor will, on the [*six months from date of mortgage*], pay to the mortgagee the sum of £200 with interest thereon in the meantime at £5 per cent. per annum, and in case the whole of the same sum shall not then be paid, will thenceforth pay Covenant for payment.

[1] The words in brackets may often be omitted.

Form 154.

to the mortgagee interest for the same sum, or for so much thereof as for the time being shall remain unpaid at the rate aforesaid by equal half-yearly payments on every [*date*] and [*date*].

Conveyance to mortgagee.

5. And this Indenture also witnesseth, that, for the consideration aforesaid, the mortgagor, as beneficial owner,[1] hereby grants unto the mortgagee and his heirs,

Parcels.

6. All those messuages situate and being Nos. 2 and 4, X. Street, in the city of London.

Habendum.

7. To hold the premises unto and to the use of the mortgagee and his heirs, subject to the proviso hereinafter contained.[2]

Proviso for redemption.

8. Provided always, that if the mortgagor shall pay unto the mortgagee the sum of £200 with interest thereon in the meantime at £5 per cent. per annum, on the [*date*], then the mortgagee will, upon the request and at the cost of the mortgagor, reconvey the premises to the use of the mortgagor in fee simple or as he shall direct.

Covenant to insure.

9. And the mortgagor hereby covenants with the mortgagee, that the mortgagor will, so long as any money shall remain on this security, keep the said messuages insured in some respectable office in London or Westminster against loss or damage by fire in the sum of £250 at least, and punctually pay all sums of money necessary for such purpose, and will on demand deliver to the mortgagee the policy of such insurance, and the receipt for every such payment; and that if default shall be made in delivering to the mortgagee upon demand the receipt for the last premium which shall then have become payable, the mortgagee shall be entitled to assume that no such insurance is in existence, and to exercise the statutory powers in that behalf.

Indemnity to mortgagee.

10. And it is hereby agreed that the mortgagee shall not be responsible for any involuntary losses which may happen in the exercise or execution of any powers or trusts hereby,

[1] This implies absolute covenants for title. See § 7 of the Conveyancing Act, 1881; R. P. Statutes, 222.

[2] The mortgagee will have by implication all the powers specified in §§ 18 to 24, inclusive, of the Conveyancing Act, 1881. R. P. Statutes, 246—264. But he cannot sell for a rentcharge without express power. Indeed, a mortgagee seldom desires to do so, as his object in selling is to obtain his principal money.

or by statute, conferred upon him in relation to this security.[1]

Exclusion of § 17 and § 18 (1) of the Conveyancing Act, 1881.

11. And it is hereby agreed that § 18 (1), and § 17 of the Conveyancing Act, 1881, shall not apply to this security, but that the mortgagee shall have the same right to consolidate as if the last-mentioned section had not been passed, and that the mortgagor shall not apply for a sale under § 25 of the

[1] The following clauses may be inserted if desired :—

10A. And it is hereby agreed that if the mortgagee shall duly perform all his covenants (other than the covenant for payment of principal at the date aforesaid) the mortgagor shall not call in the principal money for five years from the date hereof, and that the mortgagor shall not be entitled to pay off the same until the expiration of such five years [*or*, but the mortgagor shall be entitled to pay off the same by annual instalments of not less than £—— each].

10B. And it is hereby agreed that if the mortgagor shall pay interest at £4 per cent. per annum within thirty days after each day upon which interest is payable hereunder, and shall duly perform all his other covenants (except the covenant for payment), the mortgagee shall accept such interest in satisfaction of the interest at £5 per cent. per annum hereinbefore covenanted to be paid.

Power for a mortgagee to charge for services.

10C. And it is hereby agreed that the mortgagee shall be at liberty at his discretion, instead of employing a third person to transact or do any professional or other business or work in relation to this security or the property comprised therein, personally to transact or do such business or work (whether the same shall be in the nature of receivership, valuation, preservation, conveyancing, litigation, or otherwise), and shall be entitled by way of remuneration for his services in relation to any business or work which may hereafter be so transacted or done by him, and also by way of remuneration for his past services in or about the preparation and completion of this security, to charge, retain, add to his security, and be paid by the mortgagor, such sums as he would have been entitled to charge against the mortgagor if, instead of acting personally, he had actually employed and paid a duly qualified third person to transact such business and to prepare and complete this security.

Form 154. Conveyancing Act, 1881, without the written consent of the mortgagee.

IN WITNESS, &c.

Form 155. MORTGAGE OF FREEHOLDS—SHORT FORM.

Parties. 1. THIS INDENTURE, made the [*date*], between A. B., of, &c., and C. D., of, &c.

Testatum. 2. WITNESSETH, that in consideration of £500 now paid by C. D. to A. B. (who acknowledges receipt thereof), A. B., as beneficial owner, conveys to C. D.

Parcels. 3. ALL that [&c.].

Habendum. 4. To hold to and to the use of C. D., in fee simple, by way of mortgage, for securing payment on the [*date*], of £500, with interest thereon at the rate of £4 per cent. per annum.

Covenant to repay, and to pay interest. 5. AND A. B. covenants with C. D. to make such payment to him accordingly, and thenceforth to pay to him half-yearly, interest at the same rate on the principal sum remaining unpaid.

Power to insure. [6. AND it is declared that the power to insure and keep insured against loss or damage by fire conferred upon a mortgagee by the Conveyancing Act, 1881, may be exercised by C. D., to an amount not exceeding the sum of £600, as fully as if sub-sect. 2 of § 23 had not formed part of the said Act.]

IN WITNESS, &c.

Form 156. MORTGAGE IN FEE SIMPLE UNDER THE CONVEYANCING ACT, 1881.[1]

Parties. 1. THIS INDENTURE OF MORTGAGE, made the —— day of ——, 1897, between A., of, &c., of the one part, and B., of, &c., and C., of, &c., of the other part.

1st Testatum (covenant). 2. WITNESSETH, that in consideration of the sum of £——, paid to A. by B. and C. out of money belonging to them on a joint account (of which sum A. hereby acknowledges the

[1] This is the form given in the fourth schedule to the Conveyancing Act, 1881. It implies absolute covenants for title by the mortgagor. But it has no advantage—even in brevity—over Form 155.

receipt), A. hereby covenants with B. and C. to pay to them on the —— day of ——, 1897, the sum of £——, with interest thereon in the meantime at the rate of [*four*] per cent. per annum, and also as long after that day as any principal money remains due under this mortgage, to pay to B. and C. interest thereon at the same rate by equal half-yearly payments on the —— day of ——, and the —— day of ——. **Form 156.**

3. And this Indenture also witnesseth, that for the same consideration A., as beneficial owner, hereby conveys to B. and C. 2nd Testatum (assurance).

4. All that, &c. Parcels.

5. To hold to and to the use of B. and C. in fee simple, subject to the proviso for redemption following (namely), that if A. or any person claiming under him shall, on the —— day of ——, 1897, pay to B. and C. the sum of £—— and interest thereon at the rate aforesaid, then B. and C., or the persons claiming under them, will, at the request and cost of A., or the persons claiming under him, reconvey the premises to A. or the persons claiming under him. Habendum.

6. And A. hereby covenants with B. as follows [*here add covenant as to fire insurance or other special covenant required*]. Covenants.

In witness, &c.

Deed of Covenant to accompany Conditional Surrender of Copyholds.[1] **Form 157.**

1. This Indenture, made, &c., between A. B., of, &c., of the one part, and C. D., of, &c., of the other part. Parties.

2. Witnesseth, that in consideration [*continue covenant for payment, as in Form* 154, *p.* 469, *ante*]. Covenant for payment.

3. And this Indenture also witnesseth, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby covenants with the said C. D. [*continue covenant to surrender, as in Form* 101, *p.* 390, *ante*]. Covenant to surrender.

4. Subject to a condition for making void such surrender, if the said A. B., his heirs, executors, administrators, or assigns Proviso for redemption.

[1] This deed should be executed before the surrender. Otherwise covenants for title, a power of sale, and other ancillary powers, will not be given by implication, by virtue of the Conveyancing Act, 1881, but must be expressly inserted.

Form 157. shall, on [*date*], pay to the said C. D., his executors, administrators, or assigns, the sum of £—— and interest pursuant to the foregoing covenant in that behalf.

In witness, &c.

Form 158. Conditional Surrender of Copyholds by way of Mortgage.

The Manor of X. in the county of Y. } Be it remembered, that out of Court on the —— day of ——, 18—, A. B., of, &c. (one of the customary tenants of the said manor), came before C. D., gentleman, steward of the said manor, and in consideration of £—— to the said A. B. paid by E. F., of, &c., did surrender by the rod into the hands of the lord of the said manor, by the acceptance of the said steward, according to the custom of the said manor, All [*parcels*], together with all [trees, hedges, ditches, fences, ways, waters, watercourses, lights, easements, privileges, fixtures], rights, members, and appurtenances to the said hereditaments belonging, To the use of the said E. F., his heirs and assigns, at the will of the lord, according to the custom of the said manor, by the rents, customs, and services therefor due and of right accustomed: Provided always, that if the said A. B., his heirs, executors, administrators, or assigns, shall pay to the said E. F., his executors, administrators, or assigns, the sum of £——, together with interest for the same at £5 per cent. per annum on [*date*], then this surrender shall be void, but otherwise shall remain in full force and virtue.

Taken and accepted the day and
year above written by me,
C. D., *Steward of the said manor.*

Form 159. Warrant to enter Satisfaction of Conditional Surrender.

I, A. B., of, &c., do authorize and require you or your lawful deputy for the time being to enter full satisfaction and discharge on the court rolls of the manor of X. on and for a conditional surrender, dated, &c., made by C. D., of, &c., of certain hereditaments in the said surrender described, to the

use of me, my heirs and assigns, for securing to me the sum of £—— in manner therein mentioned. **Form 159.**

Dated, &c. (*Signed*) A. B.

To the steward of the manor of X.

MORTGAGE OF LEASEHOLDS BY DEMISE. **Form 160.**

1. THIS INDENTURE [*date*], between A. B., of, &c., of the one part, and C. D., of, &c., of the other part. Parties.

2. WHEREAS by an indenture, dated, &c., and made between [*lessor*] of the one part, and [*lessee*] of the other part, ALL [*copy parcels from lease verbatim*], with the appurtenances thereto belonging, were demised unto the said [*lessee*], his executors, administrators, and assigns, from [*date*], for the term of ninety-nine years, at the yearly rent of £——, and subject to the covenants and agreements therein contained. Recital of lease.

3. AND WHEREAS by divers mesne assignments, and ultimately by an indenture, dated, &c., and made between X. Y., of the one part, and the said A. B., of the other part, the premises comprised in the said lease became and are now vested in the said A. B. for the residue of the said term, subject to the said rent, covenants, and agreements. Mesne title.

4. AND WHEREAS the said C. D. has agreed to advance to the said A. B. £500 on having the same with interest secured as hereinafter appears. Agreement for loan.

5. NOW THIS INDENTURE WITNESSETH, that in consideration of £500 sterling now paid by the said C. D. to the said A. B. (the receipt whereof the said A. B. hereby acknowledges) [*covenant by A. B. to pay principal and interest, as in Form* 154, *p.* 469, *ante*]. Testatum (covenant to repay loan).

6. AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner,[1] hereby demises to the said C. D. all the premises demised by the said indenture of lease. Testatum (demise of leaseholds).

7. TO HOLD the premises, with their appurtenances, unto the said C. D., and his assigns, for the residue of the term, created by the said lease, except the last ten days thereof. Habendum.

[1] If these words are inserted, the covenants for title may be omitted in reliance upon § 7 (C.) and (D.) of the Conveyancing Act, 1881 (44 & 45 Vict. c. 41).

Form 160.

Proviso for redemption.

8. PROVIDED ALWAYS, that if the said A. B. shall, on the [*date*] next, pay to the said C. D. the sum of £500, with interest for the same in the meantime, at the rate of £5 per cent. per annum, then the said C. D. will thereupon, at the request and cost of the said A. B., surrender the premises unto the said A. B., or as he shall direct.

Trust of nominal reversion.

9. AND it is hereby declared that after any sale under the statutory power, the said A. B. shall stand possessed of the last ten days of the term created by the said lease upon trust for the purchaser of the premises sold; And shall be a trustee thereof for such purchaser within the Trustee Act, 1893.

Power of attorney as to nominal reversion.

10. AND the said A. B. hereby appoints the said C. D., his attorney, to assure the premises for all the residue of the said term to any such purchaser.

Covenant as to insurance.

11. AND the said A. B. hereby covenants with the said C. D. that the said A. B. will, at the request of the said C. D., produce to him the receipt for the premiums payable on the insurance of the premises, pursuant to the covenant in the said lease, for the then current year. And that if default shall be made in producing any such receipt, the said C. D. shall be entitled to assume that no insurance pursuant to the said covenant is subsisting, and to exercise the statutory powers in that behalf.

Indemnity to mortgagee.

12. AND it is hereby agreed that the said C. D. shall not be responsible for any involuntary losses which may be sustained in the exercise of any powers or trusts hereby or by statute conferred upon or reposed in the said C. D. in relation to this security.

Exclusion of § 17 and § 18 (1) of the Conveyancing Act, 1881.

13. AND it is hereby agreed that § 18 (1), and § 17 of the Conveyancing Act, 1881, shall not apply to this security, but that the said C. D. shall have such right of consolidation as he would have been entitled to if the last-mentioned section had not been passed.

IN WITNESS, &c.

Form 161.

MORTGAGE OF LEASEHOLDS TO A BUILDING SOCIETY BY DEMISE.

Parties.

1. THIS INDENTURE, made, &c. [*date*], between A. B., of, &c. (one of the members of the X. Building Society, and hereinafter called "the borrower"), of the one part, and the said

X. Building Society (incorporated under the Building Societies Act, 1874, and having its registered office at No. 999, Y. Street, in the city of Z., hereinafter called "the society"), of the other part. **Form 161.**

2. WHEREAS by an indenture of lease dated, &c. [*recite lease as in Form* 160, p. 475]. Lease.

3. AND WHEREAS the borrower is the owner of —— shares in the society, numbered respectively from —— to ——, and as such owner is, according to the rules of the society as now in force (which rules, together with such further or other rules of the society as shall for the time being during the continuance of this security be in force, are hereinafter called "the rules"), entitled to receive out of the funds of the society the sum of £—— in respect of his shares therein upon executing this indenture, and has elected pursuant to the rules to repay the same, with interest, by monthly subscriptions of —— shillings for each of the said shares, payable at each monthly subscription day of the society, during the term of —— years from the date hereof. Shares of borrower.

4. NOW THIS INDENTURE WITNESSETH, that in consideration of £—— paid out of the funds of the society to the borrower in respect of his —— shares (the receipt whereof is hereby acknowledged), the borrower hereby covenants with the society that the borrower will pay to the society, according to the rules, all the monthly subscriptions which, according to the rules, shall become payable by the borrower in respect of the said —— shares, that is to say, the sum of —— shillings per month on every monthly subscription day of the society for the period of —— years from the date hereof, and all fines and other moneys which, according to the rules, shall become due to the society in respect of the said shares, and will also, on demand, pay to the society, with interest at £6 per cent. per annum, all moneys which shall be expended by the society in pursuance of any power hereby or by statute conferred on the society as mortgagee of the hereditaments hereinafter described. 1st Testatum. Covenant to repay.

5. AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the mortgagor, as beneficial owner, hereby demises unto the society, 2nd Testatum. Demise.

6. ALL and singular the premises comprised in the said lease. Parcels.

Form 161.

Habendum.

7. To hold the same unto the society henceforth for all the residue of the said term of —— years created by the said lease (except the last three days thereof) by way of mortgage for securing to the society the payment of the said principal sum and interest thereon by monthly instalments, and also the payment of all fines and other sums aforesaid.

Provisoes.

8. PROVIDED ALWAYS, and it is hereby agreed as follows:—

Rules to apply.

(*a.*) The rules shall apply hereto as if expressly inserted herein with the necessary modifications.

Entire loan to be due on default.

(*b.*) If, and whenever the borrower shall make default for three calendar months in payment of any moneys payable by him under the rules, or in payment of any moneys to be expended by the society under any such power as aforesaid, or shall fail to perform any of his covenants herein contained, or hereby and by statute implied, or any of the rules, then all moneys which would otherwise have become payable in future in respect of the said shares shall immediately become payable without discount, and the sum so payable shall for the purposes of the Conveyancing Act, 1881, be deemed the mortgage money, and the requirements and restrictions of the said Act as to giving notice prior to the exercise of any statutory power, shall not apply to this security.

Application of moneys received by society under powers.

(*c.*) All moneys received by any receiver of, or upon any sale by, the society shall (after making any prior payment which, pursuant to the Conveyancing Act, 1881, ought properly to be made thereout) be applied in discharge of the moneys which shall have become due under this indenture, regard being had to clause (*b.*) hereof, together with such further sum as would for the time being be required to redeem the premises hereby mortgaged according to the rules, and the surplus only, after making all such payments, shall be paid to the borrower.

Receipt clause.

(*d.*) Upon any sale under the statutory power, the receipt of any two directors of the society shall, for the purposes of the Conveyancing Act, 1881, be deemed the receipt of the mortgagee.

Trust of nominal reversion.

(*e.*) The nominal reversion of three days hereby reserved of the said term of —— years shall henceforth be

held in trust for the society, subject to any equity of redemption subsisting hereunder, and the borrower hereby appoints the society his attorney, at any time to assign the same, and to do and execute all acts and deeds necessary or proper for that purpose. Form 161.

(*f.*) The society shall not be answerable for any involuntary losses which may happen in or about the exercise or execution of any powers or trusts hereby or by statute conferred upon the society as such mortgagee as aforesaid. Indemnity clause.

(*g.*) Section 17 of the Conveyancing Act, 1881, shall not apply to this security, but the society shall be entitled to consolidate this security with any other security which it may at any time hold on any other property for any other debt at any time owing to it from the borrower. § 17 of Conveyancing Act excluded.

(*h.*) § 18 of the Conveyancing Act, 1881, shall not apply to this security so far as it confers powers of leasing upon a mortgagor in possession. § 18 of Conveyancing Act excluded.

(*i.*) In case the borrower shall at any time fail to keep the premises hereby mortgaged in a good and tenantable state of repair, or to perform or observe any of the covenants or conditions contained in the said lease, the society may thereupon enter upon the premises and execute and do such repairs and acts as may be necessary for the due performance and observance of such covenants and conditions. Repairs.

9. And the borrower hereby covenants with the society that the borrower will, at all times during the continuance of this security, observe the rules and keep all buildings now or hereafter erected on the premises hereby mortgaged in good tenantable repair and condition and insured against damage by fire in such sum (not exceeding £——) and in such office and names as the society shall from time to time in writing direct, and will, on demand, produce to any officer of the society the policy of such insurance and the receipt for the last premium which shall have become payable in respect thereof before such demand, and if default shall be made in production on demand of any such receipt the society shall be entitled to assume that no such insurance is subsisting, and to exercise the statutory powers in that behalf. Covenants by mortgagor.

In witness, &c.

Form 162. FURTHER CHARGE TO A BUILDING SOCIETY.

Parties.

1. THIS INDENTURE, made, &c. [*date*], between A. B., of, &c. (one of the members of the X. Building Society, and hereinafter called "the borrower"), of the one part, and the said X. Building Society (incorporated under the Building Societies Act, 1874, having its registered office at, &c., and hereinafter called "the society"), of the other part, and being supplemental to an indenture of mortgage dated, &c., and made between the borrower, of the one part, and the society, of the other part, whereby certain leasehold hereditaments, situate, &c., were mortgaged to the society for securing the subscriptions, fines, and other moneys payable to the society in respect of —— shares of the society held by the borrower.

Further shares of borrower.

2. WHEREAS the borrower is the owner of —— further shares in the society, numbered, &c., in addition to the shares in the said mortgage mentioned, and as such owner is entitled according to the rules of the society to receive out of the funds of the society the sum of £—— in respect thereof upon executing this indenture, and he has elected, pursuant to the rules, to repay the same by monthly subscriptions of £ —— in respect of each of such —— shares, payable on each monthly subscription day during the term of —— years from the date hereof.

Testatum (covenant).

3. NOW THIS INDENTURE [*&c., as in last preceding Form*].

Further charge.

4. AND it is hereby agreed and declared that all the hereditaments comprised in the said mortgage shall stand charged with the payment to the society of as well the moneys payable in respect of the said original advance of £—— secured by the shares mentioned in the said mortgage, as of the subscriptions, fines, and other moneys payable according to the rules of the society for the time being in force in respect of the said further advance of £—— and the said further shares, and shall not be redeemable until payment of the whole of the said subscriptions, fines, and other moneys, according to the covenants in the said mortgage and herein contained.

Powers to society by reference.

5. AND that all the powers, trusts, covenants, and provisions in the said mortgage contained, or thereby or by statute conferred upon the society as mortgagee of the said hereditaments for securing the payment of the moneys thereby secured, shall extend and be applicable to secure the payment of the

moneys hereby covenanted to be paid in the same manner, or as nearly as may be, as if such powers, trusts, covenants, and provisions had been herein repeated with reference to all moneys secured by the said mortgage and this indenture respectively, and that such portions of the Conveyancing Act, 1881, as are excluded from the security created by the said mortgage shall not apply to this security. Form 162.

MEMORANDUM OF DEPOSIT OF DEEDS WITH LIMITED BANKING COMPANY TO SECURE BALANCE OF CURRENT TRADE ACCOUNT. Form 163.

1. IT IS HEREBY DECLARED, that A. B. and C. D., both of, &c., carrying on business in partnership under the style of and hereinafter called "B. and D.," having recently opened a banking account with the X. Bank, Limited, hereinafter called "the company," have this day deposited with the company the muniments of title specified hereto in the schedule hereto. Memorandum of deposit.

2. THE said muniments shall be a security to the company for payment of all sums of money now or hereafter owing from or payable by B. and D., or any partner therein, either alone or together with any other person, to the company on any account whatsoever. Sums secured.

3. THE said muniments shall also be a security to indemnify the company against all losses, costs, damages, claims, and demands which may arise or be incurred in respect of the non-payment of any notes, drafts, orders, cheques, bills of exchange, or other negotiable instruments, at any time held or paid by the company, upon which B. and D., or any such partner, may be liable, including any costs and expenses incurred in relation to the matters aforesaid or any of them. Indemnity.

4. B. and D. hereby charge all the hereditaments comprised in the said muniments, and all their present and future estate and interest therein, with the payment to the company on demand of all such sums as aforesaid. Charge.

5. THIS security is to be limited to £5,000, but is to be a continuing security, and to cover the ultimate balance (not exceeding £5,000) due or payable as aforesaid, after giving credit for any dividend or composition which may be received from or on account of any person liable hereunder, notwith- Extent of security.

Form 163.

standing that the company may receive any moneys from them or him after the date hereof.

Changes in firm.

6. This security shall not be discharged, varied, or affected by any change which at any time may take place in the partners or trade of B. and D.

Declaration of trust.

7. The said A. B. and C. D. hereby declare that they will during this security stand possessed of the hereditaments comprised in the said muniments in trust for the company for the purposes of this security, and that the company may, at its discretion, by deed remove them or either of them from such trusteeship and appoint any one or more of its managers, or any other person or persons, as trustees or trustee in their or his place, and may upon any such appointment vest the said hereditaments by declaration pursuant to the Trustee Act, 1893, in the persons who, upon such appointment, shall be trustees for the purposes of this security.[1]

Statutory powers.

8. The powers by the Conveyancing Act, 1881, §§ 18 to 24 inclusive, made incident to mortgages, shall be exercise-able in relation to the property comprised in the said muniments, except that the power to sell (with all ancillary powers and provisions) shall be exerciseable by the company or its assigns at any time hereafter without giving any notice whatever.

Dated, &c.

The Schedule above referred to.

Date.	Parties.	Parts.	Description.

Form 164. Mortgage of Policy of Life Assurance by Indorsement on the Policy.

Parties.

1. This Indenture, made [*date*], between the within-named A. B., of the one part, and C. D., of [*address and description*], of the other part, Witnesseth as follows:—

Covenant to pay principal and interest.

2. In consideration of £—— now paid by the said C. D.

[1] A stipulation to this effect was supported in *London and County Banking Co.* v. *Goddard*, (1897) 1 Ch. 642.

to the said A. B. (the receipt whereof is hereby acknowledged), the said A. B. covenants to repay the said £——, with interest from the date hereof, at £5 per cent. per annum on [*date*], to the said C. D., and, in case the whole thereof shall not then be repaid, thenceforth to pay to the said C. D. interest on the unpaid part thereof half-yearly on every [*date*] and [*date*]. Form 164.

3. For the consideration aforesaid, the said A. B., as beneficial owner, hereby assigns to the said C. D. the within written policy and all moneys to become payable thereunder, and the full benefit thereof. Mortgage of policy.

4. To hold the same unto the said C. D. by way of mortgage for securing the payments aforesaid. Habendum.

5. The said A. B. will keep the said policy in force and punctually pay all premiums thereon. If any overdue premium shall be unpaid for fourteen days, the said C. D. may pay the same, and all sums paid by him under this clause shall be added to and form part of the principal money hereby secured. Covenant to keep up policy.

In witness, &c.

Mortgage of a Reversionary Interest in a sum of Consols. Form 165.

1. This Indenture, made [*date*], between A. B., of, &c. (hereinafter called "the mortgagor"), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called "the mortgagees"), of the other part. Parties.

2. Whereas under or by virtue of an indenture of settlement dated the 7th of May, 1866, and made between the late R. S., of the first part, T. S. (then T. U., spinster), of the second part, W. X. and Y. Z., of the third part, and of a deed poll dated 6th of November, 1896, under the hand and seal of the said T. S., the mortgagor is now entitled to a sum of £2,200 New Consols now standing in the names of the said W. X. and Y. Z. as trustees of the said settlement, subject to the life interest therein of the said T. S. under the said settlement, and subject also to the powers of investment and varying investments contained in the said settlement. Recital of title.

3. And whereas the mortgagees have at the request of Agreement for loan.

Form 165.

the mortgagor agreed to lend to him the sum of £500 upon having the repayment thereof with interest secured in manner hereinafter appearing.

Testatum No. 1. (Covenant.)

4. Now this Indenture witnesseth, that in pursuance of the said agreement and in consideration of the sum of £500 now paid to the mortgagor by the mortgagees (the receipt whereof the mortgagor hereby acknowledges), the mortgagor hereby covenants with the mortgagees that the mortgagor will on the —th day of ——, 1897, pay to the mortgagees or the survivor of them, or the executors or administrators of such survivor, their, his, or her assigns, the sum of £500, with interest thereon in the meantime at 4½ per cent. per annum. And will in case and so long as any principal money shall be owing on this security pay to them, him, or her interest for the same at the rate aforesaid by equal half-yearly payments on the —— of —— and the —— of —— in every year.

Testatum No. 2. (Assignment.)

5. And this Indenture also witnesseth, that in further pursuance of the said agreement and for the consideration aforesaid, the mortgagor as beneficial owner hereby assigns unto the mortgagees,

Parcels.

6. All that the estate and interest of the mortgagor in the said sum of £2,200 New Consols, or other the investments for the time being representing the same.

Habendum.

7. To hold the same unto the mortgagees, their executors, administrators, and assigns, subject to the life interest therein of the said T. S., and also to the proviso for redemption hereinafter contained.

Proviso for redemption.

8. Provided always, that if the mortgagor shall on the said —th of ——, 1897, pay to the mortgagees or the survivor of them, or the executors or administrators of such survivor, their, his, or her assigns, the said sum of £500, with interest for the same in the meantime at the rate aforesaid, they shall at any time thereafter, upon the request and at the cost of the mortgagor, reassign the premises hereby assigned to the mortgagor or as he shall direct.

Variation of statutory power.

9. And it is hereby agreed, that for the purpose of any sale of the premises hereby mortgaged, or any part thereof, under the statutory power, the whole of the principal money hereby secured shall be deemed to become due immediately upon the execution of this indenture. And that any such

sale may be made, if thought fit, with the concurrence of the trustees of the said settlement and of the said T. S. or her assigns, in order to effect a sale of the premises in possession, with power for the mortgagees to agree with the person or persons concurring in such sale for the apportionment of the purchase-money in such manner as may be thought proper.[1] Form 165.

10. PROVIDED ALWAYS, that the mortgagees, their executors, administrators or assigns, or any of them, shall not be answerable for any involuntary losses which may happen in or about the exercise or execution of any power or trust hereby or by statute vested or reposed in the mortgagees in relation to this security. Indemnity.

IN WITNESS, &c.

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[1] If the mortgage were of an unascertained share of residue instead of a specific sum of consols, the following powers might be added:—

AND that the mortgagees shall (in addition to all statutory or other powers) have the following powers, namely:—

(a) To agree with the trustees or trustee of, or other persons interested under, the said settlement as to the amount or otherwise of the share and premises hereby assigned or any part thereof.

(b) To accept in or towards satisfaction of such share and premises, or any part thereof, any freehold or leasehold hereditaments, or any stocks, funds, shares, or securities, and at such value as the mortgagees may think fit, which hereditaments, stocks, funds, shares, or securities shall be subject to this security and to the statutory power of sale and other powers vested in the mortgagees.

(c) To settle and approve of all or any accounts of the said trustees or trustee.

(d) To give and execute any release or releases to the trustees or trustee.

AS WITNESS, &c.

N.B.—Mortgagee should ascertain (1) details of property; (2) that no prior mortgage or charge exists; and (3) that all vacancies in trusteeship are filled; (4) and notice of this mortgage should be given to each trustee.

Form 166. MORTGAGE OF A PUBLIC-HOUSE TO A BREWERY COMPANY.

Parties. 1. THIS INDENTURE, made [*date*], between A. B., of, &c. (hereinafter called "the mortgagor"), of the one part, and the N. W. B. Co., Ld. (hereinafter called "the company"), of the other part.

Testatum. (Covenant for payment.) 2. NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— now lent to the mortgagor by the company (the receipt whereof is hereby acknowledged), the mortgagor hereby covenants with the company that the mortgagor will, upon demand in writing by the company left at or affixed to the premises hereby demised or some part thereof, pay to the company the said principal sum of £——, with interest for the same in the meantime at the rate of £5 per cent. per annum: And also all such further sums as shall for the time being be due from the mortgagor to the company, as well for money advanced to or for the use or on account of the mortgagor, or paid on his behalf, or for rent, taxes, repairs, licences, or insurances, or for any other matter in respect of the premises hereby demised, with interest for such further sums at the rate aforesaid from the time of such advances or payments respectively until repayment thereof, also for goods sold and delivered by the company to the mortgagor.

Testatum. (Demise.) 3. AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid the mortgagor, as beneficial owner, hereby demises to the company,

Parcels. 4. ALL those messuages and hereditaments described in the schedule hereto, with their appurtenances and all trade and other fixtures and fittings which now are, or which at any time during the continuance of this security may be, in or about the premises, together also with the goodwill of the business carried on therein, and all benefits and advantages of the magistrates' and excise licences for carrying on the trade of a licensed victualler thereon.

Habendum. 5. TO HOLD the premises unto the company for all the residue of the term for which the same premises are held by the mortgagor under the indenture of lease referred to in the said schedule (except the last day thereof), subject to redemption as hereinafter mentioned.

Proviso for redemption. 6. PROVIDED ALWAYS, that if the mortgagor shall, on demand served upon him personally or by notice in writing

left upon the premises requiring payment, pay to the company such principal, interest, and other moneys as are mentioned in the covenant aforesaid, and as shall then be owing on this security, then the company will, upon the request and at the cost of the mortgagor, surrender the premises hereby demised unto the mortgagor or as he may direct.

Power to enter on default.

7. PROVIDED ALWAYS, that if the mortgagor shall not, upon such demand as aforesaid, pay all moneys then due upon this security, the company, or any person or persons on its behalf, or the assigns of the company, may immediately or at any time thereafter, and notwithstanding any subsequent receipt of any part of the moneys due, and without any consent of the mortgagor or giving to him any previous notice to quit, enter upon and take possession of the premises.

Power to carry on business.

8. AND may also carry on the trade of a licensed victualler thereon and afterwards relinquish the same, and in carrying on such trade may employ such managers and servants, at such salaries and upon such conditions, as the company may think fit.

Power of sale.

9. AND IT IS HEREBY DECLARED, that the power of sale conferred by the Conveyancing Act, 1881, shall be exerciseable by the company or its assigns at any time after such demand as aforesaid (whether any of the aforesaid powers shall have been exercised or not), and without giving any notice requiring payment of the mortgage money or any notice whatever, and that any sale of the said fixtures, fittings, or any of them, may be by way of reference to valuation, and upon any sale under the statutory power as hereby varied the purchaser shall not be bound or concerned to see whether such demand has been made or whether any case has happened in which such sale is authorized.

Power of attorney.

10. AND the mortgagor hereby irrevocably appoints A. B. and C. D., the managers of the company, or either of them, or the person or persons for the time being entitled to exercise the powers aforesaid, the attorneys or attorney of the mortgagor (with power to appoint substitutes or a substitute) to assign and transfer the last day of the said term created by the said lease to any purchaser and to transfer the licences for carrying on the business for the time being carried on upon the premises to any purchaser or lessee thereof or any

Form 166.

such other person or persons as the person or persons for the time being entitled to exercise the said powers shall think fit, and for the purposes aforesaid or any of them to execute all such deeds and instruments as the said attorneys or attorney shall think fit.

Power to obtain transfer and renewal of licences.

11. And also to attend before the licensing magistrates or other authorities for the division in which the premises are situate at any sessions, and to sign all such notices and other documents, and to do all such things as the said attorneys or attorney shall consider necessary or expedient in order to obtain a legal transfer of the said licences to any such purchaser, lessee, or other person or persons as aforesaid, and also for obtaining the annual renewal of the licences in the name of the mortgagor or otherwise, and for withdrawing the entry of the mortgagor at the Excise office, and also for obtaining "protection" as fully and effectually as the mortgagor could do if personally present.

Trust of last day of term.

12. And it is hereby declared, that if the premises shall be sold under the aforesaid power, or if the equity of redemption therein shall be foreclosed, the mortgagor, or the persons deriving title under him, shall stand possessed of the last day of the said term in trust for the purchaser or persons foreclosing, as the case may be.

Attornment.

13. And the mortgagor hereby attorns and becomes tenant from year to year to the company of the premises hereby demised at the yearly rent of £——, to be paid by equal half-yearly payments on the [*dates*], the first half-yearly payment thereof to be made on the [*date*].

Power to determine tenancy.

14. And it shall be lawful for the company at any time to enter upon the premises and determine the tenancy hereby created.

Indemnity.

15. And it is hereby agreed, that the company, in the event of its entering into possession or receipt of the rents and profits of the mortgaged premises, shall not under any circumstances be liable to account except for such moneys as it shall actually receive or be answerable or accountable for any involuntary loss which may happen in the exercise of the powers hereinbefore contained or any of them.

Mortgagor's covenants.

16. And the mortgagor hereby covenants with the company and its assigns as follows:—

To pay rent, &c.

(a) At all times hereafter to pay, observe, and perform the

rent reserved by and covenants and conditions contained in the said lease.

(b) To keep all buildings, effects, or property of an insurable nature comprised in this security effectually insured against damage by fire, and to deposit the policy or policies of such insurance with the company, and whenever required to produce to the company the receipts for the premiums thereon.[1] To insure.

(c) Not to convert the said messuage or public-house into a private house, or use the same or suffer it to be used other than as an inn, tavern, beerhouse, or public-house. Not to use except as public-house.

(d) To reside personally on the premises and keep the said messuage or public-house open as an inn, tavern, beerhouse, or public-house, and to use his best endeavours to preserve and extend the trade and connection thereof. To reside and carry on trade.

(e) To conduct and manage the same in a proper and orderly manner, and not to do or suffer anything to be done whereby the licence or licences of the said public-house may be or become liable to be forfeited or suspended, or which may render the mortgagor liable to be convicted of any offence against any Act of Parliament for the time being in force. To preserve licences.

(f) At his own cost to apply for, and use his best endeavours to obtain annually, or oftener, as may be necessary, renewals of the licences for carrying on the said business upon the premises. To obtain renewals.

(g) At all times during the continuance of this security to purchase all malt liquors from the company. To purchase from company.

(h) Not to remove any of the said fixtures or fittings without the permission in writing of the company. Not to remove fixtures.

17. And it is hereby agreed and declared, that sections 17 and 18 (1) of the Conveyancing Act, 1881, so far as they confer any powers or rights upon mortgagors, shall not apply to this security. Exclusion of §§ 17 and 18 (1) of the C. A. 1881.

18. And it is hereby agreed and declared, that where the context shall so require or admit, the expression "the Interpretation.

[1] A covenant to insure the licences may be added. See Form 135, § 5 (j), p. 440, *ante*.

Form 166.

mortgagor" shall include the executors, administrators, and assigns of the said A. B. and the expression "the company" shall include the assigns of the company.

Limitation of security.

19. AND IT IS HEREBY DECLARED, that the principal sum hereby secured shall not exceed £——.

Marginal notes.

20. AND IT IS HEREBY DECLARED, that the marginal notes hereto shall not form part of, or affect the construction of, this indenture.

IN WITNESS, &c.

The SCHEDULE above referred to.

[*Insert description of property and particulars of lease.*]

Form 167.

TRANSFER OF MORTGAGE OF FREEHOLDS.

Parties.

1. THIS INDENTURE, made [*date*], between A. B., of, &c. (hereinafter called "the transferor"), of the one part, and C. D., of, &c. (hereinafter called "the transferee"), of the other part.

Recital of mortgage.

2. WHEREAS by an indenture dated, &c., and made between X. Y., of the one part, and the transferor, of the other part, the said X. Y. covenanted to pay to the transferor £500 with interest as therein mentioned. And by the same indenture the said X. Y. conveyed the hereditaments, specified in the schedule hereto, unto and to the use of the transferor in fee simple by way of mortgage to secure the said sum of £500 and interest.

State of mortgage debt.

3. AND WHEREAS the said sum of £500, with £20 for interest thereon, is now owing on the security of the said indenture (hereinafter called "the mortgage").

Testatum No. 1. (Transfer of debt.)

4. NOW THIS INDENTURE WITNESSETH, that in consideration of £520 now paid by the transferee to the transferor (the receipt whereof the transferor hereby acknowledges), the transferor hereby assigns unto the transferee all principal money and interest now owing and henceforth to become due under the mortgage, together with the benefit of all securities for the same.

Habendum. No. 1.

5. TO HOLD the same unto the transferee absolutely.

Testatum No. 2. (Conveyance.)

6. AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the transferor as mortgagee hereby conveys unto the transferee,

Form 167.

7. ALL AND SINGULAR the hereditaments comprised in the mortgage, which hereditaments are more fully described in the schedule hereto. Parcels.

8. TO HOLD the same unto and to the use of the transferee and his heirs subject to such equity of redemption as the same are now subject to under the mortgage. Habendum No. 2.

IN WITNESS, &c.[1]

The SCHEDULE above referred to.

[*Insert description of property from mortgage.*]

RECONVEYANCE OF FREEHOLDS BY INDORSEMENT. Form 168.

1. THIS INDENTURE, made [*date*], between the within-named C. D., of the one part, and the within-named A. B., of the other part. Parties.

2. WITNESSETH, that in consideration of the sum of £525 (being the amount owing for principal and interest under the within-written indenture) now paid by the said A. B. to the said C. D. (the receipt whereof the said C. D. hereby acknowledges), the said C. D. as mortgagee hereby conveys unto the said A. B., Testatum.

3. ALL AND SINGULAR the hereditaments comprised in and assured by the within-written indenture. Parcels.

4. TO HOLD the same unto and to the use of the said A. B. and his heirs; freed and discharged from all moneys intended to be secured by, and from all claims and demands under, the within-written indenture. Habendum.

IN WITNESS, &c.[2]

[1] This form may easily be adapted to a transfer of a mortgage of leaseholds or any other description of property by slightly varying §§ 6, 7, and 8 according to the Forms of Conveyance and Assignment given in this volume.

[2] This form can easily be varied so as to adapt it to a reconveyance of any other description of property.

NOTICES.

Form 169. NOTICE OF DESIRE TO DETERMINE PARTNERSHIP.

To Mr. C. D.

I HEREBY give you notice that, pursuant to clause 7 of the deed of partnership, dated, &c., between you and myself, I desire that the partnership now subsisting between us under the said deed shall determine on the —th of ——, 189—.

Dated, &c. [*Signature.*]

Form 170. NOTICE OF DISSOLUTION OF PARTNERSHIP.[1]

NOTICE is hereby given, that the partnership lately subsisting between us, the undersigned A. B., C. D., and E. F., as merchants at X., in the county of Y., under the firm of "B. & Co.," was, on the 31st of December last, dissolved by mutual consent, so far as regards the said A. B., who, on that day, retired from the business; and that all debts due and owing to or by the late firm will be received and paid by the said C. D. and E. F.

As witness our hands this [*date*].

[*Signed*] { A. B. / C. D. / E. F.

Witness, G. H.

Form 171. NOTICE FOR "LONDON GAZETTE" TO BE GIVEN ON BEHALF OF RETIRING PARTNERS.

"*Notice of Change in Constitution of a Firm.*"

IN pursuance of sect. 36 of the Partnership Act, 1890, notice is hereby given that a change has taken place in the constitution of the firm of B. and C., carrying on business at, &c. as, &c. under the name of, &c. by the retirement therefrom on the, &c., of the said A. B., and that from that date the busi-

[1] See Partnership Act, 1890 (53 & 54 Vict. c. 39), § 37.

ness will be carried on at the same place and under the same name by the said C. D. alone. Form 171.

Dated the —th of ——, 18—.

E. F. [*address*].
Solicitor for the above-named A. B.

NOTICE TO HIGH BAILIFF THAT TRUSTEES CLAIM FURNITURE. Form 172.

No. of plaint.
No. of warrant.

In the County Court of Surrey, holden at Wandsworth.

Between A. B., plaintiff,
and
C. D., defendant.
E. F. and G. H. } claimants.

TAKE NOTICE that E. F., of, &c., and G. H., of, &c., the above-named claimants, claim the goods and chattels specified in the schedule hereto, seized and taken in execution in the house of C. D., the above-named defendant, situate at, &c., under process issuing out of this Court in this action, and mentioned in the interpleader summons, and that the grounds of the claim of the said E. F. and G. H. are that the said goods and chattels were assigned to them by an indenture dated, &c., made between [*parties*].

Dated this —— of ——, 18—.

[*Signature.*]
Solicitor for the said E. F. and G. H.

The SCHEDULE above referred to.

LETTER TO ACCOMPANY PRECEDING FORM. Form 173.

SIR,

As solicitor for Messrs. E. F., of, &c., and G. H., of, &c.,

I hereby give you notice that the property and effects seized by you at, &c., under an execution levied in an action between A. B. and C. D., are their property, and I hereby

Form 173. require you forthwith to withdraw from the possession thereof.

Yours faithfully,

To the High Bailiff, [*Signature.*]
County Court of Surrey, holden at Wandsworth, his Bailiffs and Officers.

Form 174. NOTICE AS TO STOCK UNDER R. S. C., ORD. XLVI.[1]

To the X. Company [Limited].

TAKE NOTICE that the stock comprised in and now subject to the trusts of the settlement [*or* will] referred to in the affidavit to which this notice is annexed, consists of the following (that is to say) [*here specify the stock*].

This notice is intended to stop the transfer of the stock only, and not the receipt of dividends [*or* the receipt of the dividends on the stock as well as the transfer of the stock].

[*Signed*] A. B.

Form 175. NOTICE TO QUIT FROM LANDLORD TO TENANT.

To Mr. J. P., or whom else it may concern:

I HEREBY give you notice, that I require you to quit and deliver up to me on or before the [*date*] the peaceable and quiet possession of all that messuage or tenement, outbuildings, garden and arable land, situate in the parish of E., in the county of M., which you now hold of me as tenant, or otherwise that you deliver up the premises to me at the end of the year of your tenancy which shall expire next after the

[1] This notice, and the affidavit on p. 209, have the same operation as a writ of distringas formerly had. See R. S. C., Ord. XLVI. r. 8. Where a reversionary interest in stock is settled, it is prudent to give this notice; but where trustees or a beneficiary become entitled to an immediate transfer of stock, the form of Request at p. 520, *post*, should be used. A remainderman interested in stock—although only contingently—is entitled to information from or through his trustee, whether the fund is subject to any charging order, stop order, or notice under this order. *Re Tillott, Lee* v. *Wilson*, (1892) 1 Ch. 86.

end of one year [*or* one half-year] from the date hereof.[1] Dated, &c. Form 175.

Yours, &c., A. B.
[By C. D., his agent.]

NOTICE TO QUIT, AND FOR DOUBLE RENT. Form 176.

To Mr. A. B., or whom else it may concern:

I HEREBY give you notice to quit and deliver up to me, or to the landlord for the time being, possession of the several pieces of land and hereditaments situate in the parish of X., in the county of Y., which you now hold as tenant from year to year, and which are described in the schedule hereto, on the [*date*], or at the end of the year of your tenancy which shall expire next after the end of one year [*or* one half-year] from the date hereof, and on failure thereof I shall require you to pay thenceforth double the former rent, or double the yearly value of the said several pieces of land and hereditaments, according to the statute in that case made and provided. Dated, &c.

Yours, &c.,
A. B.,
Solicitor and agent for the landlord or landlords of the said premises.

The SCHEDULE above referred to.
[*Description of property.*]

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[1] For farm land near Manchester the notice would be to quit—

"At the times following, that is to say, as to the meadow land on the 25th of December next; as to the pasture and other land (except such part thereof as you may be entitled to hold as an outlet for your cattle from the 2nd of February to the 1st of May next) on the 2nd of February next; and as to the said messuage or dwelling-house, outbuildings, and other the premises on the 1st of May next, or on such other day upon which a year of your tenancy shall expire as shall happen next after the end of one year [*or* half-year] from the date hereof."

Form 177. NOTICE TO QUIT, FROM TENANT TO LANDLORD.

To Mr. J. P., or whom else it may concern:

I HEREBY give you notice that it is my intention to quit and deliver up to you on the [*date*], possession of the messuage or tenement, outbuildings, garden, and land, situate in the parish of E., in the county of M., which I now hold of you as tenant. Dated, &c.

Yours, &c.,
A. B.

Form 178. NOTICE BY LESSOR [*or* LESSEE] OF DESIRE TO DETERMINE LEASE.

To Mr. C. D., of, &c.

PURSUANT to a power in this behalf given to me by an indenture of lease dated, &c., whereby I [*or* you] demised to you [*or* me] a messuage known as X. House, situate in Y. Street, in the parish of Z., I hereby give you notice of my desire that the term of twenty-one years created by the said lease shall determine at the end of the seventh year thereof, namely, at Midsummer, 1891 [*or as the case may be*], and I hereby determine the same at the time aforesaid accordingly.

Dated, &c. [*Signature.*]

Form 179. NOTICE TO LESSEE TO ABATE NUISANCE.

To Mr. C. D., or whom else it may concern:

WHEREAS by indenture, dated, &c., and made between A. B., of, &c., and yourself, a piece of land with the messuage and buildings thereon, situate in the parish of X., in the county of Y., was demised to you for the term of forty years, at the yearly rent of £60, and subject to covenants by you, including a covenant that you would not erect on the said piece of land any new or additional erection or building, nor use, or exercise, or permit or suffer to be used or exercised in or upon the premises thereby demised, any trade or business without the consent in writing of the said A. B., his heirs or assigns.

Now we hereby require you, within fourteen days from the date hereof, to take down the cart-shed and stable you

have lately erected on the premises, contrary to the said covenant; and we also require you immediately to discontinue the trade or business of a greengrocer now carried on upon the premises by you or on your account, contrary to the said covenant; and we further require you to make reasonable compensation in money for your breaches of the said covenants. And we give you notice that, unless you take down the said cart-shed and stable, and discontinue the said business within —— weeks from this day, the said A. B. will enter upon the premises and determine the said lease pursuant to the power in that behalf contained in the said lease. Form 179.

Dated, &c. [*Signed*] M. and N.,
Solicitors for the above-named A. B.

NOTICE TO LESSEE TO REPAIR ACCORDING TO COVENANT. Form 180.

To Mr. C. D., of, &c.

I HEREBY give you notice that the messuage you hold under me by virtue of a lease dated, &c., is in a defective state of repair, and I require you, pursuant to your covenant in that behalf contained in the said lease, to execute, within three calendar months from the date hereof, in a good and workmanlike manner, the several repairs thereto specified in the schedule hereto.

Dated, &c.

SCHEDULE of repairs required.

[*Signature.*]

NOTICE UNDER § 14 OF THE CONVEYANCING ACT, 1881, OF BREACH OF COVENANT TO REPAIR. Form 181.

To Mr. C. D., of, &c.

I HEREBY give you notice that there is now subsisting a breach of your covenant contained in an indenture of lease dated, &c., to repair the messuage demised to you by the said lease, and that such breach has been committed by your neglect to execute the repairs specified in the schedule hereto; and I require you, within one calendar month from

Form 181. the date hereof, to remedy such breach, and to make reasonable compensation in money by paying to me £——, being the costs of a survey of the said messuage incurred by me by reason of such breach as aforesaid. And I further give you notice that if you make default in complying with this notice, I intend to re-enter upon the said messuage, and to determine the term created by the said lease pursuant to the power thereby reserved to me.

Dated, &c.

SCHEDULE of repairs required.

[*Signature.*]

Form 182. NOTICE OF ASSIGNMENT OF LIFE POLICY.

To the X. Life Assurance Association.

I, the undersigned C. D., hereby give you notice that by an indenture, dated the ——th of ——, 189 , and made between A. B., of [*address and description*], of the one part, and myself, of the other part, the said A. B. assigned to me absolutely [*or* "by way of mortgage," *as the case may be*], the policy granted by you on his life for £——, numbered ——, and dated, &c., and all moneys thereby assured or to become payable thereunder. And that I shall henceforth pay the premiums on the said policy [*or* And that the said A. B. thereby covenanted to pay all future premiums on the said policy].

Dated, &c. [*Signature.*]

Form 183. NOTICE BY MORTGAGEE TO TRUSTEES OF MORTGAGE OF LEGACY.

To Messrs. G. H. and I. K.

Gentlemen,

I HEREBY give you notice that by an indenture, dated, &c., and made between A. B., of, &c., of the one part, and C. D., of, &c., of the other part, the said A. B. assigned unto the said C. D. the legacy of £2,000 (and the stocks, funds, and securities upon which the same may be invested) to which, under the will of E. F., late of, &c., deceased, the said A. B. is absolutely entitled, subject to the life interest in the

income thereof of L. F. for her life (and which said sum of £2,000 is now invested in the names of you the said G. H. and I. K., as the trustees of the said will, in New Consols) by way of mortgage for securing to the said C. D. the repayment of the sum of £700, with interest thereon at £5 per cent. per annum. Dated, &c. Form 183.

Yours, &c.,

Y. Z.,

Solicitor for the said C. D.

NOTICE BY SECOND MORTGAGEE TO FIRST MORTGAGEE. Form 184.

I HEREBY give you notice, that by an indenture, dated, &c., made between A. B., of the one part, and myself, of the other part, the hereditaments now in mortgage to you situate at X. were assured to me by the said A. B. for securing the sum of £200 and interest. Dated, &c.

[*Signed*] C. D.

To Mr. [*first mortgagee*].

NOTICE BY MORTGAGEE TO TENANT TO PAY RENT TO HIM. Form 185.

I HEREBY give you notice, that by an indenture, dated, &c., made between, &c., the house at X. now in your occupation was mortgaged to me for securing £1,000 and interest, and the said house is now vested in me by virtue of the said indenture: And I require you to pay to me or to my authorized agent all rent now due and hereafter to become due in respect of the premises. Dated, &c.

To Mr. C. D. [*Signed*] A. B.

NOTICE OF INTENDED SALE BY MORTGAGEE. Form 186.

To Mr. A. B. and whom else it may concern:

I HEREBY request payment of the sum of £1,000, with interest thereon from [*date*], owing to me by virtue of the indenture of mortgage executed by you, dated, &c.; and I hereby give you notice, that unless the same be paid within [three] calendar months from the service hereof, I shall

Form 186. proceed to a sale of the hereditaments in the said indenture comprised, in execution of the power thereby [*or* by statute] vested in me. Dated, &c.

[*Signed*] C. D., &c.

Form 187. NOTICE BY MORTGAGOR OF INTENTION TO PAY OFF.

To Mr. A. B., of, &c.

I HEREBY give you notice that on the [*date*],[1] I intend to pay to you all principal moneys secured by an indenture of mortgage, dated, &c., and made between myself, of the one part, and you, of the other part, together with such interest [and costs (if any)] as shall then be due to you under such mortgage. Dated, &c.

[*Signature.*]

[1] This date should be six months after the date of the notice.

PARTNERSHIP.[1]

PARTNERSHIP AGREEMENT BETWEEN THREE PERSONS—CONCISE FORM. **Form 188.**

1. AN AGREEMENT made, &c., between A. B., of, &c., C. D., of, &c., and E. F., of, &c. Parties.

2. THE SEVERAL PERSONS parties hereto hereby agree to become partners from the —— of ——, 18—, upon the following terms: Agreement.

3. DURATION OF PARTNERSHIP to be so long as the partners or any two of them shall live, but the partnership to be dissolved as to any partner (hereinafter called "the late partner") from the happening of any one of the following events (hereinafter called "the cause of dissolution"), namely:— Duration.

(a) the death or bankruptcy of the late partner;

(b) the expiration of three calendar months after giving notice to the other partners of his desire to retire;

(c) the late partner suffering his share of the partnership property to be charged under the Partnership Act, 1890, for his separate debts;

(d) judgment for dissolution under sect. 35 of the said Act on account of the lunacy, incapacity, or misconduct of the late partner;

but the partnership shall continue between the remaining partners.

4. NAME OF FIRM to be A. B. & Co. Firm.

5. BUSINESS OF FIRM to be that of, &c. Business.

6. PLACE OF BUSINESS to be at, &c., or at such other places as partners determine. Place.

7. BANKERS to be, &c., or such other bankers as partners determine. Bank.

8. CAPITAL— Capital.

(a) to consist of the sum of £——;

(b) to be contributed by the partners in equal shares;

(c) not to be reduced without consent of all partners.

[1] The law of partnership has been to some extent codified by the Partnership Act, 1890 (53 & 54 Vict. c. 39).

Form 188.

Wages. 9. Wages of partners for their services to be—

(a) A. £2 per week;

(b) B. 34*s.* per week during the first year of the partnership, to be increased by 2*s.* per week during the second year, and by a further 2*s.* per week during each subsequent year until his total wage amounts to £2 per week;

(c) C. 30*s.* per week during the first year of the partnership, to be increased in like manner until his total wage amounts to £2 per week.

Profits. 10. Profits (including premiums paid by apprentices) to be divided among partners equally.

Losses. 11. Losses arising from partnership business to be borne by partners equally.

Accounts. 12. Account books to be kept showing all partnership transactions.

Balance sheets. 13. General account and balance sheet to be made out within three weeks after the 31st of December in every year, and

(a) To show the assets and liabilities of the partnership;

(b) To show the amount due to or by each partner;

(c) To be signed by each partner; and

(d) When so signed to be binding on each partner, except as regards any manifest error therein to which any partner shall within three months after so signing call the attention of the other partners or partner.

Drawings. 14. Drawings by each partner on account of profits—

(a) Not to exceed in any calendar month £——; and

(b) If in excess of his share of profits shown by next balance sheet, the excess to be forthwith repaid.

Dissolution. 15. On dissolution of the partnership as to any partner the remaining partners (equally) or partner (unless they or he elect to wind up the whole partnership) to purchase the share of the late partner, the purchase-money to be £—— if the cause of dissolution happen before the [*date*] (*day for first balance sheet*), or if afterwards the sum which his share shall upon the then last general account and balance sheet amount to and would have amounted to if such account and balance sheet had been taken on the [*date*] immediately preceding the cause of dissolution, and (in either case) interest on the

purchase-money (in lieu of profits) at the rate of £7 per cent. per annum, from the commencement of the partnership or from the then last general annual account and balance sheet (as the case may be) until payment of the purchase-money. **Form 188.**

As witness, &c.

Partnership Deed between two Traders, with usual Clauses. **Form 189.**

1. This Indenture, made, &c., between A. B., of, &c., of the one part, and C. D., of, &c., of the other part. Parties.

2.—(*a.*) Whereas the said A. B. has for some time past carried on the business of, &c., at X. Street, Z., in the county of Y.; Recitals. Business.

(*b.*) And whereas the said A. B. has agreed to admit the said C. D. into partnership in the said business as from the [*date*], for the term and upon the conditions hereinafter contained; Agreement for partnership.

(*c.*) And whereas upon the treaty for the said partnership it was agreed that the value of the stock in trade, plant, and materials used in carrying on the said business, and of the freehold [*or* leasehold] land and buildings upon which the same is carried on, should be taken at the sum of £5,000, and that the said C. D. should pay to the said A. B. the sum of £2,500 for the purchase of one moiety of the said business, and the said stock in trade, plant, materials, land and buildings; Purchase-money for share.

(*d.*) And whereas the said C. D. has, immediately before the execution hereof, paid to the said A. B. the said sum of £2,500, as he hereby acknowledges. Payment thereof.

3. Now this Indenture witnesseth as follows:— Testatum.

4. The said A. B. and C. D. will be partners in the business of [*specify it*], for the term of [seven] years from [*date*], if they shall so long live. Nature and term of partnership.

5. The style of the partnership shall be "B. & Co." Style of firm.

6. The business of the partnership shall be carried on at Z., or at such other place or places as the partners shall hereafter determine. Place of business.

7. The capital of the partnership shall consist of the stock in trade, plant, and materials now in, upon, or belonging to the premises where the said business is carried on, and also Capital.

Form 189.

the said hereditaments (which shall belong to the partners in equal shares), and of advances to be made by the partners as hereinafter mentioned.

Advances of capital

8. Each partner shall, within one month from the date hereof, advance to the partnership the sum of £1,000, and all future capital required for carrying on the said business shall be advanced by the partners in equal shares, and they shall be considered as creditors of the partnership in respect of such advances, and shall be allowed interest for the same at the rate of £5 per cent. per annum.

Vesting of buildings in partners.

9. The said A. B. shall, when required by the said C. D., at the expense of the partnership, execute such assurance for vesting the said hereditaments where the partnership business is now carried on in the said A. B. and C. D. jointly [for the remainder of the term therein, subject to the payment of the rent and performance of the lessee's covenants],[1] as the said C. D. may require; and in the meantime shall hold the same in trust for the said A. B. and C. D. as partnership property.

Junior partner to have house rent free.

10. The said C. D. shall be at liberty, if he shall think proper, to use and occupy the dwelling-house at No. 10, X. Street, aforesaid [in the same manner as he has for some time past used and occupied the same], for the residence of himself and his family, without paying any rent or taxes for the same; and the rent of the said house and other the hereditaments where the partnership business shall be carried on, and all repairs, additions, and alterations of, to, in or about the same, and all taxes, rates, assessments, payments for insurance and other outgoings in respect of the same, and the salaries and wages of all clerks, travellers, workmen, servants, or apprentices who shall be employed in or about the partnership business, and all charges and expenses which shall be incurred in or about the partnership business, and all losses and damages which shall happen in or about the same, shall be paid out of the profits, or in case the same shall become deficient, then by the partners out of their respective separate estates, in the proportions in which they are entitled to the profits.

Outgoings.

[1] The words in brackets are only required when the property is leasehold.

Profits.

11. On the making up of every yearly account hereinafter provided for, all interest which shall be due to the partners for such sums of capital as they shall respectively have advanced to the partnership, shall in the first place be deducted, and the clear profits shall be divided between them in equal shares.

Drawings.

12. The said A. B. shall be at liberty to draw out of the business any sum not exceeding £6 per week for his own use, and the said C. D. shall be at liberty to draw any sum not exceeding £5 per week for his own use, but in case at the end of any year it shall appear, upon making the annual account aforesaid, that the nett profits of such year shall not have amounted to the aggregate sum drawn out by the partners, then each partner shall, immediately after such annual account shall have been made and settled, repay to the partnership the difference between the amount of the sums which he shall actually have received in respect of such weekly payments as aforesaid, and the amount of his share of the nett profits. If his share of the nett profits shall exceed the sums so withdrawn by him as aforesaid, the amount of such excess shall be carried to his credit in the books of the partnership, and may be withdrawn at pleasure.

Attention to business.

13. The said A. B. and C. D. shall diligently employ themselves in and about the business of the partnership [and shall devote their whole time and attention thereto], and carry on, manage, and conduct the same for the greatest benefit and advantage of the partnership.

Other businesses and journeys prohibited.

14. Neither partner shall either directly or indirectly engage in any trade, manufacture, or business, except upon the account and for the benefit and advantage of the partnership, nor take any apprentice, or hire or dismiss any clerk, traveller, workman, or servant in the business of the partnership without the consent of the other; nor go any journey on account of the partnership or otherwise, without such consent, and if either of them shall, at any time during the partnership, go any such journey without such consent as aforesaid, he shall for such time as he shall be upon any such journey forfeit a proportionate part of his share in the profits of the partnership, or the sum of £50, at the option of the other partner.

Form 189.

Partners to be faithful and give information.

15. EACH partner shall be just and faithful to the other in all dealings and transactions in or about the business of the partnership, and shall give to the other a faithful and just account thereof when the same shall be reasonably required, and shall, upon any reasonable request of the other, inform him of all letters, accounts, writings, and other things which shall come to his hands or knowledge concerning the partnership business.

Employment of partnership assets, &c.

16. NEITHER partner shall, without the consent in writing of the other, employ any of the moneys, goods, or effects of the partnership, or engage the credit thereof, except upon the account and for the benefit of the partnership; and in all cases where there shall be occasion to give any bond, note, bill, or other security, or sign any cheque for the payment of any money on account of the partnership, the same shall be signed or executed by both partners [*or* in the name of the firm].

Prohibited credit.

17. NEITHER of the partners shall lend any of the moneys or deliver upon credit any of the goods of the partnership to any person whom the other shall previously by notice in writing have forbidden him to trust; and in case either partner shall, after such notice, lend any money or deliver upon credit any goods of the partnership, the partner so doing shall pay to the partnership the amount or value of the money or goods which he shall so lend or deliver.

Partners not to give bonds, &c.

18. NEITHER partner shall, without the previous consent in writing of the other, enter into any bond or become bail, surety, or security, with or for any person, or subscribe any policy of insurance, nor do or willingly suffer to be done anything whereby any property of the partnership may be seized, attached, extended, or taken in execution.

Partners to pay private debts.

19. EACH partner shall duly and punctually pay all debts now or hereafter during the partnership owing from him; and shall keep the other and the property of the partnership indemnified against his private debts and engagements, and all actions and expenses on account thereof.

Books to be kept.

20. THE partners shall keep proper books of account of all moneys received and paid, all contracts entered into, and all business transacted on account of the partnership, and all other matters of which accounts are usually kept in similar businesses, which accounts, together with all deeds, securities

for money, and papers belonging to the partnership, shall be kept at the principal place where the said business shall be carried on; and shall at all reasonable times be open to the inspection of both partners.

Annual general accounts.

21. As soon as conveniently may be after every 31st of December, the partners shall make a full account in writing of all such goods as shall have been bought and sold in the business (in the first of such general accounts from the day of the commencement of the partnership, and in each subsequent general account from the day of the last preceding account), and of all moneys, stock in trade, goods and effects, belonging or owing to or by the partnership, and of all the liabilities thereof, and of all such matters as are usually comprehended in general accounts of the like nature taken by persons engaged in similar businesses, and cause such account to be written in two books, which shall be signed by the partners within one calendar month after the time appointed for taking thereof respectively; and after such signature each of them shall take one of the said books into his custody, and shall be bound by every such account, save that if any manifest error shall be found therein within six calendar months after the same shall have been so signed, and shall be signified by either of them to the other, then such error shall be rectified.

Winding-up on dissolution *inter vivos*.

22. Within six calendar months after the expiration or determination of the partnership, otherwise than by death, a full and general account in writing shall be made and taken by the partners of all moneys, stock in trade, debts, and effects belonging to, and of all the liabilities of, the partnership, and a just valuation shall be made of all the particulars included in such account which require and are capable of valuation, and immediately after such last-mentioned account shall have been so taken and settled the partners shall forthwith make due provision for meeting all the liabilities of the partnership, and, subject thereto, all the moneys, stock in trade, debts, effects, and things then belonging to the partnership shall be divided between the partners in equal shares; and such instruments in writing shall be executed by them for facilitating the getting in of the outstanding debts and effects of the partnership, and for indemnifying each other touching the premises, and for vesting the sole right in the respective shares of the partnership stock and property in the

Form 189.

parties to whom the same respectively shall upon such division belong, and for releasing to each other all claims on account of the partnership as are usual in cases of the like nature.

Winding-up on death.

23. If either partner shall die during the partnership, his share in the partnership shall be taken to be the amount which appeared as his share of the capital in the last preceding balance-sheet, and his executors or administrators shall be entitled to receive from the surviving partner such amount, together with or less by any sum which may be due from or to the firm to or from the deceased partner at the time of his death, in respect of profits or otherwise from the date to which the last preceding balance-sheet shall have been made up to the time of death, together with interest at the rate of £5 per cent. per annum on the said aggregate amount from the day of the death of such deceased partner until payment thereof; and the surviving partner shall, within two months next after the death of the deceased partner, give such security as the executors or administrators of the deceased partner shall reasonably require for the payment and discharge of the debts and liabilities of the partnership due at the time of the death, and for indemnifying the estate and effects of the deceased partner therefrom; and also for securing to such executors or administrators the payment of such aggregate amount as aforesaid by three equal yearly instalments, payable respectively at the expiration of one, two, and three years after the death of the deceased partner, and with each of such instalments the sum due at the date of each such payment in respect of such interest as aforesaid on the said aggregate amount, or on so much thereof as shall for the time being remain unpaid; and until such security shall be so given the said aggregate amount and interest shall be the primary charge on all the estate and effects of the partnership at the time of the death of the said partner, after payment of the liabilities thereof, and when the whole of the said aggregate amount and interest, and liabilities, shall have been fully paid and discharged, then, or at any time thereafter, the executors or administrators of such deceased partner shall, at the request and cost of the surviving partner, his executors or administrators, execute to him or them a sufficient release of the said security so to be given

as aforesaid, and also from all claims and demands respecting the partnership. **Form 189.**

24. [For the purpose of giving proper effect to the last-preceding clause, in the event of the death of either partner during the first year of the partnership, it is agreed that the profits of the partnership for such year shall be fixed at the sum of £1,500, and in the event of such death taking place during the second or any subsequent year of the said partnership, then the said profits shall be fixed at the amount of the nett profits of the preceding year (as appearing by the balance-sheet of that year), and the sum of £500 added thereto.] Amount of profits fixed for clause 23.

25. If any dispute, doubt, or question shall arise between the partners, or their respective executors, or administrators, either on the construction hereof, or respecting the accounts, transactions, profits, or losses of the partnership business, every such dispute, doubt, or question shall be referred to arbitration pursuant to the Arbitration Act, 1889. Arbitration.

Deed of Dissolution by Indorsement. **Form 190.**

1. This Indenture, made [*date*] between the within-named A. B., of the one part, and the within-named C. D., of the other part. Parties.

2. Whereas the said A. B. is desirous of retiring from the business heretofore carried on by the said A. B. and C. D. in partnership under the within-written indenture, and the said C. D. is desirous of carrying on the said business in future for his own benefit. Desire to retire, &c.

3. And whereas the share and interest of the said A. B. in the goodwill and assets of the partnership as on the date hereof has been ascertained to be of the value of £——. Value of A. B.'s share.

4. Now this Indenture witnesseth as follows:— Testatum.

5. The partnership heretofore carried on by the said A. B. and C. D. under the within-written indenture is hereby dissolved as from this day. Dissolution.

6. In consideration of £—— now paid by the said C. D. to the said A. B. (the receipt whereof is hereby acknow- Assignment of goodwill, &c.

Form 190.

ledged),[1] the said A. B., as beneficial owner, hereby releases and assigns unto the said C. D., ALL the share and interest of the said A. B. in the goodwill, contracts, assets, debts, and effects of the said business. TO HOLD the same unto the said C. D. for his own absolute benefit.

Power of attorney.

7. FOR the consideration aforesaid the said A. B. hereby irrevocably appoints the said C. D., his attorney, to demand, sue for, get in, and receive all the premises hereby assigned, and to give effectual receipts and discharges for the same, and to indorse bills and negotiable instruments, and to do all things reasonably necessary for obtaining the full benefit of the above assignment.

Covenant to pay debts.

8. IN consideration of the premises, the said C. D. hereby covenants with the said A. B. that he will duly and punctually pay and discharge all existing and future debts and liabilities of or in connection with the said business, and will keep the said A. B., his executors, administrators, estate, and effects indemnified against all actions, proceedings, claims, demands, costs, damages, expenses, and liability in respect thereof.

IN WITNESS, &c.[2]

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[1] If the whole value of the retiring partner's share is not paid at the time of dissolution, the following words must be inserted here:

"And of the covenant by the said C. D. contained in clause 9 hereof,"

and the following clause must be added:—

"9. IN consideration of the premises the said C. D. hereby covenants with the said A. B. that the said C. D. will pay to the said A. B. the sum of £—— by equal quarterly instalments of £—— each on the [*dates*], the first payment thereof to be made on the [*date*]."

If desired, bills may be given for the amounts of the instalments, or they may be secured by mortgage or charge of some part of the partnership property.

[2] If there be any freehold or leasehold property, it may be desirable to convey or assign it by a separate deed.

POWERS OF ATTORNEY.

Form 191.

Power of Attorney to Execute a Deed.[1]

Know all men by these presents that we, A. B., of, &c., and C. D., of, &c., hereby appoint E. F., of, &c., and G. H., of, &c., our attorneys and attorney in our respective names and on our behalf to receive from X. Y., of, &c., or his agent or attorney, the sum of £600, being the price agreed to be paid by the said X. Y. for all our estate and interest in certain leasehold messuages known respectively as [*insert description*], and upon the receipt of the said sum of £600 in our respective names and on our behalf, and as our respective acts and deeds, to sign, seal, and deliver a certain indenture already prepared and engrossed, or intended to be shortly engrossed, intended to bear date the 31st of December, 1880, and intended to be made between I. K., of the first part, the said E. F., of the second part, ourselves of the third and fourth parts respectively, and the said X. Y., of the fifth part, and intended to be an assurance of the said messuages to the said X. Y. And also in our respective names, and on our behalf, to indorse and sign on the said indenture a proper or effectual receipt for the said sum of £600, and to execute and do all other deeds and things which our said attorneys or attorney shall consider expedient or necessary for assuring the said messuages, and all the estate or interest therein of us and each of us to the said X. Y.; we hereby respectively undertaking to ratify, confirm, and allow all that our said attorneys or attorney shall do or cause to be done, or purport to do or cause to be done, by virtue hereof.

In witness, &c.

[1] A valid power of attorney may now be given by a married woman: 44 & 45 Vict. c. 41, § 40; R. P. Statutes, 290.

Form 192. POWER OF ATTORNEY UNDER THE GENERAL INCLOSURE ACT.

WE, A. B., of, &c., and C. D., of, &c., hereby appoint E. F., of, &c., our and each of our attorney for all the purposes of an Act passed in the 8th and 9th years of her present Majesty, intituled "An Act to facilitate the Inclosure and Improvement of Commons and Lands held in Common, and the division of intermixed Lands; to provide remedies for defective or incomplete Executions and for the non-execution of the powers of General and Local Inclosure Acts, and to provide for the revival of such Powers in certain Cases." Dated, &c.

(*Signed*) { A. B. C. D.

Witness,
E. F., of, &c.

Form 193. POWER OF ATTORNEY TO RECOVER A DEBT.

TO ALL TO WHOM these presents shall come, I, A. B., of, &c., send greeting: WHEREAS C. D., of, &c., is indebted to me in the sum of £257: NOW KNOW YE, that I hereby appoint E. F., of, &c., my attorney, to demand of the said C. D. the sum of £257, and on non-payment thereof, or any part thereof, to commence and prosecute any action for the recovery of the same in my name, and generally to do all acts, deeds, and things in or about the premises as fully and effectually as I could do if personally present; I hereby ratifying and confirming all that the said E. F. shall do or cause to be done in or about the premises by virtue hereof.

IN WITNESS, &c.

Form 194. GENERAL POWER OF ATTORNEY TO MANAGE A MERCHANT'S BUSINESS.

KNOW ALL MEN by this deed that I, A. B., of, &c., hereby appoint B., of, &c., to be my attorney, in my name and on my behalf to carry on, conduct, manage and transact all my businesses, to buy and sell goods, to pledge and deposit and obtain advances on goods and on bills of lading; to effect insurances; to ship, consign, receive, stop *in transitu*, and take possession of goods; to open all letters and correspondence, and send and sign letters in reply or otherwise; to draw,

accept, indorse, and pay, and from time to time renew bills of exchange and promissory notes; to sign, execute, and make bills of lading, and all usual and customary mercantile transfers, contracts, and engagements; to draw, sign, and indorse all orders, drafts, and cheques on my bankers; to receive, get in, and compound all debts, to agree and settle all accounts and differences between me and any other person or persons, to refer any such differences and any disputes to arbitration; to act in all matters incident to or arising out of the bankruptcy or liquidation or any composition or arrangement with the creditors of any person or persons indebted or under liability to me, or in the winding-up of any company so indebted or under liability, to prove in any such bankruptcy, liquidation, composition, arrangement, or winding-up for all amounts due to me, to vote at meetings of creditors, and to appoint proxies, to attend, vote, and act at such meetings; to commence, prosecute, and defend any action or other proceedings in any Court, to employ such person or persons as manager or managers, assistants, and servants in the said businesses or any of them, and to pay or allow to him and them such salaries and wages as my attorney shall think fit; from time to time to dismiss such person or persons; to wind up the said businesses or any of them, to refer to arbitration or otherwise to compromise or settle any questions arising in such winding-up; to do all other acts and things which my said attorney may deem requisite or necessary in connection with the carrying on or winding-up of my said businesses or any of them, to sell all or any land and buildings belonging to me either together or in parts and also the said businesses or any of them at such price or prices as my said attorney may think fit; to grant a lease or leases of all or any of such lands and buildings and either with or without the plant and machinery in and about the same for such term and at such rent as my said attorney shall think fit; and to transfer mortgages and reconvey mortgaged property upon payment of the moneys owing on the security thereof. Form 194.

Form 195. PRESENTATION TO A BENEFICE.[1]

To the Right Reverend X. Y., by divine permission Lord Bishop of Z., or to his vicar-general in spirituals, or to any other person or persons having or to have sufficient authority in this behalf:

We, A. B., of, &c., and C. D., of, &c., the true and undoubted patrons of the advowson of the rectory and parish church of W., in the county of Z., within your lordship's diocese and jurisdiction, hereby present unto your lordship and to the rectory and parish church of W. aforesaid, now vacant by the decease of the Rev. S. T., the last incumbent thereof, and to our presentation in full right belonging our beloved in Christ, the Rev. E. F., of G., in the county of Z., clerk, humbly praying that your lordship will be graciously pleased to admit and canonically to institute him, the said E. F., in and to the rectory and parish church of W. aforesaid, and to invest him with all and singular the rights, members, and appurtenances thereunto belonging, and to cause him to be inducted into the real, actual, and corporal possession thereof, and to do and perform all other matters and things which to your lordship's pastoral office may in this case in anywise appertain and belong.

In witness, &c.

[1] This form was used in the diocese of Oxford. It may be engrossed on parchment or paper, and should be signed and sealed. No stamp is required.

RELEASES.

Release from Covenant in a Lease. Form 196.

1. This Indenture, made [*date*], between A. B., of, &c., of the one part, and C. D., of, &c., of the other part. Parties.

2. Whereas by an indenture of lease, dated, &c., and made between the said A. B., of the one part, and the said C. D., of the other part, the said A. B. demised a messuage and shop situate in and known as No. 6, X. Street, in the parish of Y., in the city of Z., to the said C. D. for a term, of which fourteen years or thereabouts are unexpired. And the said C. D. thereby covenanted with the said A. B. (among other things) that he would not permit any sale by auction to take place in or upon the premises thereby demised. Recital of lease.

3. And whereas the said C. D. has, for some years past, carried on the business of a picture dealer upon the premises, and no breach of the said covenant has been committed, but the said C. D. is desirous of holding periodical sales by auction of pictures and other works of art upon the premises, and the said A. B. has agreed to release him from the said covenant. Agreement for release.

4. Now this Indenture witnesseth, that in pursuance of the said agreement, and in consideration of £10 now paid by the said C. D. to the said A. B. (the receipt whereof is hereby acknowledged), the said A. B. hereby releases the said C. D., and his assigns, from the covenant aforesaid contained in the said indenture of lease, and from all claims and demands in respect of any future breaches thereof. Release from covenant.

In witness, &c.

Release of Dower. Form 197.

1. This Indenture, made, &c. [*date*], between A. B., of, &c., of the one part, and C. B., of, &c., of the other part. Parties.

2. Whereas J. B., late of X., in the county of Y., the husband of the said A. B., died intestate on [*date*], leaving the said C. B. his eldest son and heir-at-law. Death intestate.

Form 197.

Seisin of intestate.

3. And whereas the said J. B. was at his death seised in fee simple in possession of the hereditaments described in the schedule hereto.

Agreement for release of dower.

4. And whereas the said C. B. has agreed to pay to the said A. B. the sum of £—— in full discharge and satisfaction of her right to dower in or out of the said hereditaments.

Testatum.

5. Now this Indenture witnesseth, that in consideration of £——, now paid by the said C. B. to the said A. B. (the receipt whereof she hereby acknowledges), the said C. B., as beneficial owner, hereby conveys and releases unto the said A. B. and his heirs,

Parcels.

6. All dower and right and title of or to dower of her, the said A. B., in or out of the hereditaments described in the schedule hereto, and all claims and demands in respect thereof.

Habendum.

7. To the intent that the said hereditaments may be held and enjoyed by the said C. B., his heirs and assigns, Freed and discharged from the dower and all other claims and demands of the said A. B., in, to, out of, and upon the same or any part thereof.

In witness, &c.

The Schedule above referred to.

Form 198.

Release to Executors by a Residuary Legatee.

Parties.

1. This Indenture, made, &c., between A. B., of, &c., of the one part, and C. D., of, &c., and E. F., of, &c., of the other part.

Will.

2. Whereas G. H., late of, &c., deceased, by his will, dated, &c., bequeathed unto the said C. D. and E. F. all the residue of his personal estate upon trust (after payment thereout of a legacy of £100 to I. K., and a legacy of £100 to L. M.) for the said A. B. absolutely.

Death and probate.

3. And whereas the said G. H. died on [*date*] without having revoked or altered his said will, which was duly proved on the [*date*] by the said C. D. and E. F.

Amount of residue.

4. And whereas the whole of the residue of the personal estate of the said G. H. has been got in by the said C. D. and E. F., and after payment thereout of the expenses

incidental to getting in the same, and the estate and other duties payable in respect thereof, and the debts of the said G. H., and the said legacies of £100 and £100, there remains in their hands the sum of £25,763. **Form 198.**

Accounts approved of.

5. And whereas the accounts of the said C. D. and E. F., showing the gross amount of the personal estate of the said G. H., and the payments thereout, have been handed to and fully inspected by the said A. B., and signed by him in order to express his approbation of the same.

Payment of nett residue.

6. And whereas the said C. D. and E. F. have, before the execution hereof, paid to the said A. B. the said sum of £25,763, being the balance appearing by the said accounts to be due to him in respect of the nett residue of the said personal estate.

Testatum.

Release of executors.

7. Now this Indenture witnesseth, that in consideration of the premises, the said A. B. hereby releases the said C. D. and E. F., and each of them, their and each of their estates and effects, from the residue of the personal estate of the said G. H., and from all trusts declared by his said will, and from all actions, proceedings, accounts, claims, and demands on account of or in relation to the estate or effects of the said G. H., or in relation to any act, matter, or thing in anywise incidental to or connected with the same.

Covenant to provide for any unpaid debts.

8. [And the said A. B. hereby covenants with the said C. D. and E. F., that in case they or either of them, their or either of their executors or administrators, shall hereafter be called upon to pay any debt owing from the said G. H., not already discharged, the said A. B. will immediately pay or reimburse the said C. D. and E. F. and each of them, their and each of their executors and administrators, such debt, together with all costs and expenses which they or he shall have paid on account or in consequence of the demanding or recovery of such debt or sum, as aforesaid, or in anywise relating thereto.]

In witness, &c.

Release to Trustees of a Settlement. **Form 199.**

Parties.

1. This Indenture, made [*date*], between A. B., of, &c., of the first part, C. D., of, &c., of the second part, and E. F., of, &c., and G. H., of, &c., of the third part.

Form 199.

Settlement.

2. WHEREAS by an indenture of settlement, dated, &c., and made between, &c., it was declared that the said E. F. and G. H. should stand possessed of the sum of £3,000 Consolidated £3 per cent. Annuities which had then recently been transferred into their names upon, with, and subject to the trusts, powers, and provisions therein contained, the said trusts being in effect for payment of the income of the trust fund to W. B. during his life, and after his death to his wife M. B. for her separate use during her life, and after her death, Upon trust for such of the children of the marriage then intended and shortly afterwards solemnized between the said W. B. and M. B., as the said W. B. and M. B. should jointly appoint.

Appointment.

3. AND WHEREAS by a deed poll under the hands and seals of the said W. B. and M. B., dated, &c., the said W. B. and M. B. jointly appointed and directed that, subject to the life interests therein of the said W. B. and M. B., the said E. F. and G. H. should stand possessed of the said sum of £3,000 Consolidated Annuities, and the investments for the time being representing the same as to two equal third parts thereof upon trust for the said A. B., and as to the remaining equal third part thereof upon trust for the said C. D. absolutely.[1]

Deaths of life tenants.

4. AND WHEREAS the said W. B. died on [*date*], and the said M. B. died on [*date*].

Payment of income.

5. AND WHEREAS the said E. F. and G. H. duly paid the income arising from the said £3,000 Consolidated Annuities and the investments for the time being representing the same to the said W. B. and M. B. respectively during their respective lives.

Changes of investment.

6. AND WHEREAS pursuant to a power contained in the settlement, the said E. F. and G. H. have from time to time varied and transposed the investments representing the said sum of £3,000 Consolidated Annuities, and the funds subject to the trusts of the settlement are now represented by the investments specified in the first and second schedules hereto.[2]

[1] If there has been any change in the trustees, that fact, and the transfer to the new trustees, should be recited.

[2] If any unauthorized investment, breach of trust, or loss has taken place, it should be recited here, and specially mentioned in the testatum.

Form 199.

Agreement for transfer.

7. And whereas it has been agreed that the investments specified in the said first schedule shall be transferred into the name of the said A. B., and the investments specified in the said second schedule shall be transferred into the name of the said C. D., in satisfaction of their respective shares in the trust fund.

Accounts rendered.

8. And whereas the said E. F. and G. H. have rendered to the said A. B. and C. D. full and particular accounts of their dealings with the trust fund, and the said A. B. and C. D. being satisfied therewith have testified their approval of such accounts by signing the same, and have agreed to execute and give to the said E. F. and G. H. such release as is hereinafter contained.

Testatum.

9. Now this Indenture witnesseth, that in consideration of the premises, the said A. B. and C. D. hereby respectively release the said E. F. and G. H. from all actions, proceedings, claims, and demands in respect of the said sum of £3,000 Consolidated Annuities, or other the trust funds for the time being subject to the said settlement and in respect of their dealings therewith, and of all things done or omitted by the said E. F. and G. H. in relation thereto.

In witness, &c.

The First Schedule above referred to.

[*Funds to be transferred to A. B.*]

The Second Schedule above referred to.

[*Funds to be transferred to C. D.*]

Release of Covenant for Production.

Form 200.

To A., of, &c.

In consideration of your having at my request procured B., of, &c., to give and deliver to me an acknowledgment of my right to production and delivery of copies and an undertaking for safe custody of the indenture specified in Part I. of the schedule hereto, I accept such acknowledgment and undertaking in satisfaction of your liability for production, delivery of copies, and safe custody of such indenture under your covenant contained in the indenture specified in Part II. of the said schedule, and agree at your expense to execute a formal release to you from such liability [so far as relates to the first-mentioned indenture]. Dated, &c.

[*Add Schedule.*]

REQUESTS.

Form 201. REQUEST BY CESTUIS QUE TRUSTENT TO TRUSTEES TO SELL OUT STOCK FOR A LOAN.[1]

To A. B. and C. D., trustees of an indenture of settlement, dated, &c.

I, the undersigned E. H., hereby (with the consent of the undersigned A. H., my wife) request that so much of the New Consols standing in your names as such trustees as aforesaid as will realize the sum of £1,000 sterling may be sold, and that the said sum of £1,000 may be advanced and lent to me, the undersigned E. H., upon security of my bond, payable on demand, with interest in the meantime at the rate of £5 per cent. per annum, pursuant to the power for that purpose contained in the said indenture. Dated, &c.

(*Signed*) { E. H.
A. H.

Form 202. REQUEST TO REGISTER STOCK.[2]

To the M. Railway Co.

I HEREBY request you to register me as absolute owner of the following stocks now standing in my name as executor of the will of A. B., of, &c., deceased, namely :—

£5,000 debenture stock.
&c., &c.

Dated this —— day of ——, 1897.

[*Signature.*]

[1] Trustees could not, of course, safely act upon such a request as this, unless the settlement gave them express power to lend to the husband on his personal security.

[2] *Settlements and Wills.* It often happens that shares and stock stand in the names of executors as executors, and that the beneficial interest is vested in the same persons in some other character, such as absolute owners or as trustees for some beneficiary under the will. To save a formal transfer from themselves as executors to themselves as absolute owners or joint proprietors the companies will generally make the necessary change in their books on having a request signed in the above form.

SETTLEMENTS.

Settlement, on Marriage, of Husband's Real Estate.[1] Form 203.

1. This Indenture, made, &c., between A. B., of, &c., of the first part, C. D., of, &c., of the second part, and E. F., of, &c., and G. H., of, &c., of the third part. Parties.

2. Whereas the said A. B. is seised in fee simple, free from incumbrances, of the hereditaments intended to be hereby conveyed. Husband's seisin.

3. And whereas a marriage has been agreed upon, and is intended shortly to be solemnized, between the said A. B. and C. D., and upon the treaty for such marriage the said A. B. agreed to settle the said hereditaments to the uses, upon the trusts, and subject to the provisions hereinafter declared concerning the same. Intended marriage and agreement for settlement.

4. Now this Indenture witnesseth, that, in consideration of the premises, the said A. B., as beneficial owner, hereby conveys unto the said E. F. and G. H. 1st Testatum. Conveyance by husband.

5. All that messuage or farm-house, with the outbuildings belonging thereto, and the several closes of land now occupied therewith, containing, by estimation, 137a. 3r. 28p., or thereabouts, known as W—— Farm, situate at X., in the parish of Y., in the county of Z., all which hereditaments are delineated in the plan drawn in the margin hereof, and are therein coloured pink. Parcels.

6. To hold the said hereditaments unto the said E. F. and G. H., their heirs and assigns, to the use of the said A. B., his heirs and assigns, until the solemnization of the said intended marriage; and after the solemnization thereof, to the use of the said A. B. and his assigns for his life, without impeachment of waste; and after his decease to the Habendum

[1] In this form the powers of maintenance, accumulation, leasing, appointing new trustees, and giving receipts, and the covenants for title, are omitted in reliance on the statutory provisions.

Form 203.

use of the said C. D. for her life for her separate use, without power of anticipation; and after the decease of the survivor of them, the said A. B. and C. D., to the use of all or such one or more exclusively of the other or others of the children of the said intended marriage, for such estates and interests, and if more than one in such shares, and under and subject to such charges, powers, provisions, and limitations for the benefit of all or any one or more of the said children, and in such manner as the said A. B. and C. D. shall by deed, with or without power of revocation and new appointment, appoint; and in default of such appointment, and so far as no such appointment shall extend, then as the survivor of them shall in like manner or by will appoint; and in default of such appointment, and so far as no such appointment shall extend, to the use of all and every the children of the said intended marriage, and their respective heirs and assigns, as tenants in common; and if there shall be only one such child, then to the use of such only child, his or her heirs and assigns; and in default of such children, to the use of the said A. B., his heirs and assigns.

Trustees for Settled Land Act.

7. And it is hereby declared that the said E. F. and G. H. and other the trustees for the time being hereof shall be trustees of the settlement hereby made for the purposes of the Settled Land Act, 1882.

In witness, &c.

Form 204.

Settlement, on Marriage, of Personalty.

Parties.

1. This Indenture, made, &c., between A. B., of, &c. [*intended husband*], of the first part, C. D., of, &c. [*intended wife*], of the second part, and E. F., of, &c., and G. H., of, &c. [*trustees*], of the third part.

Title to consols.

2. Whereas the said C. D. is entitled to a sum of £1,000 New Consols, lately standing in her name in the books of the Governor and Company of the Bank of England.

Intended marriage. Transfer of consols.

3. And whereas a marriage has been agreed upon between the said A. B. and C. D., and in pursuance of an agreement in that behalf made upon the treaty for the said marriage the said sum of £1,000 New Consols has been transferred into the names of the said E. F. and G. H.

Testatum.

4. Now this Indenture witnesseth, that, in considera-

tion of the said intended marriage, it is hereby agreed and declared as follows:— Form 204.

5. The said E. F. and G. H., and the survivor of them, his executors or administrators, their or his assigns, or other the trustees or trustee for the time being hereof (all of whom are hereinafter called "the trustees"), shall hold the said sum of £1,000 New Consols, and the investments for the time being representing the same (hereinafter called "the trust fund"), in trust for the said C. D., until the solemnization of the said intended marriage, and after the solemnization thereof upon trust to deal with the same pursuant to the directions hereinafter contained. Trust for intended wife till marriage.

6. The trustees shall either permit the whole or any part of the trust fund to remain in its present state of investment, or shall at any time, with the consent in writing of the said A. B. and C. D. during their joint lives, and the survivor of them during his or her life, and after the death of the survivor of them at the discretion of the trustees, sell the same, and invest the proceeds thereof in any of the investments specified in the schedule hereto; with power, with such consent, or at such discretion as aforesaid, to vary or transpose any such investments for any others specified in the said schedule. Investment.

7. The trustees shall, during the joint lives of the said A. B. and C. D., pay the income of the trust fund to the said C. D., for her separate use, without power of anticipation; and after the death of either of them, the said A. B. and C. D., shall pay the income of the trust fund to the survivor of them during his or her life. Life interests to wife and survivor.

8. After the death of such survivor, the trustees shall stand possessed of the trust funds, in trust for such of the children of the said C. D., in such manner as the said A. B. and C. D. shall by deed with or without power of revocation jointly appoint, and in default of any such appointment, and so far as no such appointment shall extend as the survivor of them, the said A. B. and C. D., shall by deed, with or without power of revocation and new appointment, or will, or codicil, appoint, and in default of any such appointment, and so far as no such appointment shall extend, in trust for such one or more of the children of the said C. D., as being a son or sons, shall attain the age of twenty-one years, or, being a daughter Trusts for children.

Form 204.

or daughters, shall attain that age or marry, and if more than one, in equal shares.

Hotchpot clause.

9. No child taking any part of the trust fund under any appointment made in pursuance of the power herein contained shall be entitled to any share in the unappointed part of the trust fund without bringing his or her appointed share into hotchpot and accounting for the same accordingly.

Trusts in default of children.

10. In case there shall be no child of the said C. D. who, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain that age or marry, the trustees shall stand possessed of the trust fund, or of so much thereof as shall not have been applied under any of the trusts or powers herein contained, upon the trusts following, that is to say: in case the said A. B. shall die in the lifetime of the said C. D., then in trust for the said C. D., but in case the said C. D. shall die in the lifetime of the said A. B., then upon such trusts as the said C. D. shall by will or codicil appoint; and in default of such appointment, and so far as no such appointment shall extend, in trust for such person or persons as at the decease of the said C. D. would have become entitled thereto under the statutes for the distribution of the personal estates of intestates, in case the said C. D. had died possessed thereof intestate, and without having been married, such persons, if more than one, to take as tenants in common in the shares in which they would have been entitled under the same statutes.

Power of advancement.

11. The trustees may at any time after the decease of the survivor of the said A. B. and C. D., or in the lifetime of them or of the survivor of them, in case they, he, or she shall so direct in writing, raise any part not exceeding half of the then expectant or presumptive or vested share of any child under the trusts hereinbefore declared, and pay or apply the same to him or her, or for his or her advancement or benefit, as the trustees shall in their discretion think fit.

Indemnity to trustees.

12. The trustees may lend money upon the security of property with less than a marketable title without liability for any loss thereby incurred.[1]

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[1] If it is desired to provide for an addition to the trust fund the following clause may be added:—

Power to increase trust fund.

12A. If the said A. B. shall at any time hereafter pay to

Form 204.

13. A SINGLE trustee hereof may exercise all powers conferred by statute upon trustees, and any money payable to the trustees hereof may be paid to a single trustee with the consent in writing of the other trustee or trustees hereof for the time being. Single trustee may act.

14. THE power of appointing a new trustee hereof shall be exerciseable by the said A. B. and C. D. during their joint lives and by the survivor of them during his or her life. New trustees.

15. THE notes or analysis in the margin hereof shall not form part of or affect the construction of this indenture. Marginal notes.

IN WITNESS, &c.

The SCHEDULE above referred to.

The public Stocks or Funds or Government Securities of the United Kingdom or India, or of any colony or dependency of the United Kingdom.

Stock of the Bank of England.

Freehold, copyhold, leasehold, or chattel real securities in England, Wales, [Ireland], or any colony or dependency of the United Kingdom.

The mortgages or securities of any corporation or other municipal body in the United Kingdom.

The debentures, debenture stock, or guaranteed or preference stock of any railway or other public company in the United Kingdom, incorporated by Royal Charter or Act of Parliament, or any colony or dependency of the United

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the trustees any sum of money or transfer to them any investments consisting of stocks, funds, shares, or securities of a description hereinbefore authorized and the trustees shall accept such payment or transfer (of which payment or transfer and acceptance a memorandum indorsed hereon shall be evidence), then the trustees shall stand possessed of the same moneys or investments and of the income thereof, Upon the trusts including the trust for investment and with and subject to the powers and provisions hereinbefore declared and contained concerning the said sum of £1,000 New Consols and the income thereof respectively: But the trustees shall not be obliged to accept any such payment or transfer unless in their absolute discretion they think fit so to do.

Form 204. Kingdom, incorporated by Act of the local legislature, which shall, for three years immediately preceding the date of investment, have paid a dividend of not less than £2 per cent. per annum on the original shares of such company.[1]

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[1] Compare the powers of investment at pp. 535 and 536, *post*, and the following clause :—

In any mode of investment authorized by law for the investment of trust funds, or in or upon freehold or leasehold securities in Great Britain, whether subject or not to any rent or to any provision or condition for re-entry, or in or upon the debenture, guaranteed or preference stocks, or the guaranted or preference shares of any company in the United Kingdom, or in or upon the bonds, debentures, mortgages, or securities of any company, corporation, or body, whether commercial, municipal, local, or otherwise, in the United Kingdom.

WILLS.

Will giving all Testator's Property to his Wife and appointing her Executrix.[1] Form 205.

This is the last will of me, A. B., of, &c. I give [devise and bequeath] all my [real and personal] estate and effects unto [and to the use of] my wife, C. B. [her heirs, executors, administrators, and assigns, according to the nature and tenure thereof], absolutely: And I appoint her executrix of this my will.

In witness whereof I have hereunto set my hand this 3rd of December, 1896.

A. B.

Signed by the said A. B. as his last will in the presence of us, who in his presence, at his request, and in the presence of each other, have hereunto subscribed our names as witnesses.

E. F., of, &c.
G. H., of, &c.

Short Form of Will for case of emergency.[2] Form 206.

1. I, A. B., of, &c., declare the following to be my last will:— Introduction.

2. Pecuniary legacies. I give as follows (namely), £—— to my wife, C. B., £—— to my son, D. B. [*and so on*]. Legacies.

3. Furniture and household effects I give to my wife, C. B. Furniture.

4. Real and personal estate, not herein otherwise disposed of, I give to E. F. and G. H. (herein called "my trustees"), Residue.

[1] Where brevity is an object, the words in brackets may be omitted.

[2] This document is in the form of instructions from which a formal will can be prepared; but, if duly signed and witnessed, it will itself form a valid will in the event of the death of the testator before the more formal will is signed.

Form 206.

upon trust to sell and get in the same, and out of the proceeds to pay my funeral and testamentary expenses, debts, and pecuniary legacies, but so that such legacies shall be paid primarily out of my personal estate in exoneration, so far as may be, of the proceeds of sale of my real estate.

To wife for life. 5. INCOME of my residuary estate, as well before as after sale, I give to my wife, C. B., for her life.

Remainder to children. 6. CAPITAL of my residuary estate I give, after my wife's death, to my children in equal shares.

Executors. 7. EXECUTORS to be the said E. F. and G. H.

Dated this —— day of ——, 18—.

Signed by testator in our presence, and attested and subscribed by us in the presence of him and each other.

Form 207. WILL OF A WIDOWER MAKING VARIOUS DEVISES AND BEQUESTS, AND GIVING THE RESIDUE TO TESTATOR'S CHILDREN.

Introduction. 1. THIS is the last will of me, A. B., of, &c.

Specific bequest. 2. I BEQUEATH unto my daughter Charlotte all my household furniture and chattels of every description.

Pecuniary legacies. 3. I BEQUEATH the following pecuniary legacies:—

(*a.*) To my friend E. F., of, &c., £100.

(*b.*) To my daughter Charlotte, £100.

(*c.*) To G. H., of, &c., £100 if he shall prove my will.

Specific devise to son Thomas. 4. I DEVISE to my son Thomas and his heirs my farm known as "The Holly Farm," consisting of a messuage and outbuildings, and about fifty acres of land situate at [Nettlebed], in the county of [Oxford], [free from the mortgage of £1,000 thereon, in favour of William Jackson, which sum of £1,000, and all interest due thereon, I direct shall be paid out of my personal estate after payment of the legacies bequeathed by this my will].[1]

Specific devise to son John. 5. I DEVISE to my son John and his heirs my freehold messuage No. [500, St. Paul's Churchyard], in the city of [London].

[1] In the absence of this clause, Thomas would have to pay off the mortgage out of his own pocket, or take the farm subject to it.

6. I DEVISE and bequeath all the residue of my real and personal estate and effects unto and to the use of my said sons Thomas and John and my said daughter in equal shares. Residuary gift. Form 207.

7. I APPOINT my said sons Thomas and John and the said G. H. executors of this my will.

8. I REVOKE all wills and testamentary dispositions heretofore made by me. Revocation.

9. THE marginal notes hereto shall not be deemed part, or affect the construction, hereof. Marginal notes.

IN WITNESS, &c.

WILL OF A MARRIED MAN GIVING HIS RESIDUARY ESTATE UPON TRUST FOR HIS WIFE AND CHILDREN OR GRANDCHILDREN LIVING AT HIS DEATH. SPECIAL POWERS AS TO PARTNERSHIP BUSINESSES. Form 208.

1. I, A. B., of, &c., hereby revoke all testamentary dispositions heretofore made by me and declare this to be my last will. Introduction.

[2. I DESIRE to be buried, if practicable, in X. Churchyard, in the county of Y., and I direct that the cost of my tombstone shall not exceed £——].[1] Burial.

3. I APPOINT my dear wife, C. B., my son, B. B., and my daughter, D. B., trustees, executrixes, and executor, of this my will, and I declare that the words "my trustees" herein used shall comprise the three persons aforesaid, and the survivors and survivor of them, and the executors or administrators of such survivor, or other the trustees or trustee for the time being of this my will. Executors and trustees.

4. I BEQUEATH to my said dear wife all consumable stores in and about any dwelling-house in my occupation at my decease, and also my wearing apparel, household furniture, plate, plated goods, jewellery, trinkets, linen, china, glass, books, pictures, prints, and other effects of the like nature which shall be in and about any such dwelling-house at my decease absolutely. Furniture and stores to wife.

5. I BEQUEATH the following pecuniary legacies duty free (namely):— Pecuniary legacies.

(*a.*) To my said wife £100 to be paid within fourteen days after my death in priority to all other legacies.

[1] This is a special clause, and is seldom required.

Form 208.

(*b.*) To my nephew, C. D., the son of my late sister, A. D., £500.

(*c.*) To my niece, E. D., the daughter of my said late sister, £500.

(*d.*) To my niece, F. D., another daughter of my said late sister, £500.

Residue to trustees.

6. I DEVISE, appoint, and bequeath all real and personal estate, not hereby or by codicil hereto otherwise disposed of, to which at my death I shall be beneficially entitled, or of which I shall have power to dispose beneficially by appointment or otherwise (all of which and the investments for the time being representing the same are hereinafter called "my trust property"), to my trustees, upon trust to receive, possess, hold, and deal therewith according to the directions hereinafter contained.

Trust for conversion and investment.

7. MY trustees shall, as soon as practicable after my death,[1] sell, call in, and convert into money,[2] all such parts of my trust property as shall not consist of money, and shall out of my trust property pay my funeral and testamentary expenses and debts and the pecuniary legacies hereby and by codicil hereto bequeathed (all legacies being paid primarily out of personalty in exoneration of proceeds of realty), and shall invest the clear residue thereof (hereinafter called "my

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[1] Compare the following trust for conversion at the discretion of the trustees. Where this form is used, it will not be necessary to insert a power to postpone conversion:

Trust for conversion.

7A. MY trustees shall, at such times and in such manner in all respects as they shall think fit, sell and convert into money such part of my trust property as shall not consist of money. And shall, out of the proceeds thereof and the money of which I shall be possessed at my death, pay my funeral and testamentary expenses and debts, and the legacies hereby and by codicil hereto bequeathed, all legacies being paid primarily out of personalty in exoneration of proceeds of realty, and all debts, funeral and testamentary expenses being paid primarily out of proceeds of realty in the event of my personalty being insufficient to pay the said legacies and a proportionate part of such debts and expenses.

[2] As to powers of trustees for sale, see §§ 13 to 16 of the Trustee Act, 1893.

residuary estate"), in any mode of investment hereinafter authorized.

Income to wife for life.

8. My trustees shall pay the income of my residuary estate to my said wife during her life.

Residue to children, &c.

9. After the death of my said wife, my trustees shall hold my residuary estate in trust for such of my children living at my death, and such of my grandchildren living at my death (and being children of any then deceased child of mine), as shall, being male, attain twenty-one years of age, or being female attain that age or marry, in equal shares *per stirpes* as tenants in common.[1]

In default to brothers.

10. In case of the failure of the trusts aforesaid, my trustees shall hold my residuary estate in trust for such (if any) of my brothers, F. B., G. B., and H. B., as shall be living at my death, and the children then living and attaining twenty-one (or, in the case of females, marrying), of such (if any) of my said three brothers as shall be then dead, in equal shares *per stirpes* as tenants in common.

Ultimate trust.

11. In case of the failure of all the trusts aforesaid, my trustees shall hold my residuary estate in trust for my nephew, K. B., absolutely.

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[1] Compare the following clause:—

Capital to children and grandchildren living at testator's death.

9A. After the death of my said wife, my trustees shall hold my residuary estate in trust for such of my children living at my death, and such of my grandchildren living at my death (and being children of any then deceased child of mine), as being male attain the age of twenty-one years, or being female attain that age or marry, in equal shares *per stirpes*, my children then living taking one share each, and the children then living of each deceased child taking one share among them as tenants in common [except that my granddaughter, E. D., shall take only one moiety of the share which her mother, M. D., would have taken under this clause if she had survived me, and that the other moiety of such share shall go to my other children and grandchildren in the same relative proportions as their original shares. And I direct that the share of the said E. D. shall not vest at twenty-one or marriage, but shall vest upon her attaining the age of twenty-five years, and not earlier, whether she marries under that age or not.]

Special provision as to one grandchild.

Form 208.

Trusts of shares of daughters.

12. [My trustees shall hold the share of each daughter of mine in my residuary estate upon trust to pay the annual income thereof to such daughter during her life without power of anticipation, and after her decease in trust for such of the issue of such daughter born in her lifetime, in such manner in all respects as she, whether covert or sole, shall by will or codicil appoint, and in default of such appointment, upon trust for such of the children of such daughter as, being male shall attain twenty-one years of age, or being female shall attain that age or marry, and if more than one, in equal shares; but no child who or whose issue shall take any part of my residuary estate under any such appointment shall participate in the unappointed portion thereof without bringing the benefit of such appointment into hotchpot; and if there shall be no child of such daughter who, being male, shall attain twenty-one years of age, or being female shall attain that age or marry, in trust for the others or other of my said children who shall have attained or shall attain the age of twenty-one years, and if more than one, in equal shares, but so that the share or shares accruing to every daughter of mine shall be held upon the same trusts (so far as circumstances will admit) as her original share.][1]

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[1] The following clause may be used instead of § 12:—

Trusts of daughters' shares.

12A. My trustees shall retain so much of the share of each daughter of mine in my residuary estate as shall not have been applied under clause 13 hereof, and shall invest the same in any mode of investment hereinafter authorized, and shall, during the life of such daughter, pay the income thereof to her for her separate use without power of anticipation, and after the death of such daughter shall hold such share in trust for such of the issue of such daughter (such issue to be born and take vested interests within twenty-one years after her death) in such manner in all respects as such daughter shall by deed, will, or codicil appoint. And in default of and subject to any such appointment, in trust for such of the children of such daughter as shall, either before or after the death of such daughter, attain the age of twenty-one years, or (being females) marry under that age, and, if more than one, in equal shares, but no child who or whose issue shall take under any appointment pursuant to the power in this

Form 208.

13. My trustees may (after the death of my said wife, or previously thereto if she shall so direct in writing) raise any part or parts, not exceeding one-half part, of the then expectant presumptive or vested share or fortune of any child or grandchild of mine under this my will, and apply the same for his or her advancement or benefit. Power of advancement.

14. My trustees may, at their discretion, apply the whole or such part as they shall think fit of the income of the share to which any minor shall for the time being be presumptively or contingently entitled under this my will (subject to any prior trust relating to such income), in or towards his or her maintenance or education, or otherwise for his or her benefit [whether such minor shall be entitled or contingently entitled to such income or not], and my trustees shall accumulate the unapplied surplus of such income, and such accumulations shall be liable to be applied in like manner, but, subject to such liability, shall be added as capital to the share or shares from whence the same shall have arisen. Power of maintenance

15. My trustees may, at their sole discretion, postpone the conversion of any part of my trust property so long as they shall judge expedient.[1] Power to postpone sale.

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clause, shall participate in the unappointed part in such share without bringing the appointed part into hotchpot. And in default of such children of such daughter, in trust for such persons or purposes as such daughter shall by deed, will, or codicil appoint.

[1] This clause is not necessary where the trust for conversion is at such time as the trustees think fit. Sometimes a testator desires a particular part of his property to be retained as in the following clause:—

15A. My trustees may, at their discretion, postpone the sale and conversion of any part of my trust property for so long as they shall think fit, and they shall not, during the life of my said wife, sell any copyright dramas, or other copyright productions of which I shall at my death be the sole registered proprietor, but they shall during her life, at her expense, grant such licences and make such arrangements for the representation or publication thereof as my said wife shall from time to time direct, and shall pay to her for her own absolute benefit all fees, profits, and other emoluments which shall be payable to them under every such arrangement. Power to postpone, particularly as to copyright dramas.

Form 208.

Power to concur in winding-up businesses.

16. My trustees may concur with any partner or partners of mine in winding-up any business in which I may be interested at my death in such manner as they, in their absolute discretion, think fit, or may sell my interest therein to any partner or other person for such consideration, in cash or otherwise, payable at once or by instalments, and generally on such terms as they shall think fit, and may exercise in relation to any such business, or my share therein, all the powers mentioned in § 21 of the Trustee Act, 1893.[1]

Real estate to be deemed converted.

17. My real estate shall be considered as personalty from my death, and until the same shall be actually sold, my trustees may manage and let upon lease, or from year to year, or cultivate my real and leasehold estates, and make out of the income or capital of my estate any outlay which my trustees may consider proper for improvements, repairs, insurance, calls on shares, premiums on policies, or otherwise for the benefit or in respect of my estate.[2]

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[1] Compare the following special power:—

Directions for sale of joint copyrights.

16A. My trustees shall, if practicable, sell my share and interest in all copyright dramas and other copyright productions, of which I and some other person shall at my death be jointly registered as proprietors, to such other person, upon the terms that one moiety of all fees, profits, and other emoluments which shall become payable in respect of the representation or publication thereof respectively, so long as any copyright shall subsist therein respectively, shall be paid by such other person to my trustees. All moneys received by my trustees under any such arrangement shall be treated as income arising from my residuary estate. In case my trustees shall be unable to sell my share in any such work as last aforesaid upon the terms hereinbefore prescribed, they may sell the same (with the consent of my said wife during her life) in consideration of a single payment of such amount as they shall deem reasonable, and such payment shall be deemed capital, and fall into my residuary estate accordingly.

[2] Sometimes it is desired to give special powers to build upon and improve the testator's real estate, as in the following clause:—

Power to build, manage, &c.

17A. My trustees may apply any part of my trust fund in erecting any buildings, fixtures, and machinery upon, and making any other additions to, and improvements in, and

Form 208.

18. The nett income produced from every part of my trust property, whether converted or not, and whether of a wasting or permanent character, shall, as well during the first year from my death as afterwards, be applicable as income under the trusts of this my will, but no property not actually producing income shall be treated as producing income.[1]

Income to be treated as such.

Investment.

19. My trustees may invest any moneys requiring or capable of investment under this my will, in their names or under their legal control, in any of the modes of investment following (namely): in or upon any of the public stocks or funds, or government securities of the United Kingdom or India, or any colony or dependency of the United Kingdom, or in stock of the Bank of England, or in or upon freehold, copyhold, leasehold, or chattel real securities in England, Wales, or Scotland, or in or upon the bonds, debentures, debenture stock, mortgages, or securities, or the guaranteed or preference stock or shares of any company, or public, municipal, or local authority in the United Kingdom, and may at their discretion vary or transpose any investments into or for any other investment hereby authorized.[2]

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may grant easements over, my real estate and chattels real for the time being remaining unsold, and may generally manage and improve and lease the same from year to year, or for any term not exceeding fourteen years, to take effect in possession or within twelve calendar months from the making of the lease at rack-rent.

[1] Where the trust is for conversion at the testator's death, and the trustees have a power to *postpone conversion*, the tenant for life is not entitled to the entire income in the absence of a special direction. But where the power was to *retain existing investments*, it was held in an unreported case that the tenant for life was entitled to the whole income without such a special direction. It is better, however, to avoid all doubt by inserting an express provision.

[2] Compare the following powers of investment:—

Investment.

19A. My trustees may invest any trust moneys which may come into their hands under this my will in any of the public stocks or funds of Great Britain, or upon government, real, long leasehold, or copyhold securities, or in or upon the stocks, funds, shares, or securities, of any company incorpo-

Form 208.

Power to settle questions.

20. My trustees may determine whether any money shall, for the purposes of this my will, be treated as capital or income, and out of what part of my trust property any expenses ought to be paid, and may apportion as they shall think fit any funds, subject to different destinations, which may have become blended, and may determine all questions and matters of doubt arising in the administration of my trust property, and every such determination, whether formally made or implied in the acts of my trustees, shall

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rated by royal charter, or by or under any public or private Act of Parliament, or in or upon the securities of any municipal corporation, board of guardians, board of health, county or district council, burial board, baths and washhouses commissioners, or other similar public authority, and they may, at their discretion, vary the said stocks, funds, shares, and securities, for any other investments of the nature aforesaid (*a*).

Investment.

19B. My trustees may invest any money requiring or capable of investment under this my will in their names or under their legal control in any of the modes of investment following (namely): in or upon any of the public stocks or funds or government securities of the United Kingdom, or India, or any colony or dependency of the United Kingdom, or any foreign government or state; or in stock of the Bank of England; or in or upon freehold, copyhold, leasehold, or chattel real securities in England, Wales, or Scotland; or on the security of any real or immoveable property in India, or in any colony or dependency of the United Kingdom; or in or upon the bonds, debentures, debenture stock, mortgages, or securities, or guaranteed or preference stock or shares of any company or public, municipal, or local authority in the United Kingdom, or India, or any colony or dependency of the United Kingdom, or any foreign country; or on the security of rates or tolls made or levied by any such authority as aforesaid; and my trustees may, at their discretion, vary or transpose any investments into or for any other investments hereby authorized.

(*a*) This investment clause gives a very wide discretion to the trustees; but in country towns it is often desired to give them the power of investing in securities of this nature.

be conclusive, and bind all persons interested under this my will. **Form 208.**

21. My trustees may, at their uncontrolled discretion, instead of acting personally, employ and pay a solicitor or any other person to transact any business, or do any act of whatever nature required to be done under the trusts of this my will, including the receipt and payment of money. Power to employ agents.

22. The said B. B., and any other trustee of this my will who may be a solicitor or engaged in any other profession or business, may be employed in his professional or business capacity by my executors and trustees, and shall be entitled to be paid all such remuneration for any business (whether professional or not) done by him in the course of such employment as he would have been entitled to receive in respect thereof if he had not been an executor or a trustee, including acts which a trustee could have done personally.[1] Professional trustee may charge.

23. The fact that any of my trustees or his wife is personally interested in any matter in relation to which any power or discretion is hereby given to my trustees shall not preclude him from acting in relation thereto; but he may, if he thinks fit, decline to act in relation thereto, in which event the decision of my other trustees or trustee in relation thereto shall be binding. Interested trustee may act.

24. A sole trustee of this my will shall be competent to exercise all powers conferred on trustees by the Conveyancing Act, 1881, and to act for all the purposes of the Settled Land Acts as applied to this my will.[2] Sole trustee may act.

25. The power of appointing new trustees of this my will shall be vested in my said wife during her life. New trustees.

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[1] Such a clause as the following is sometimes desired:—

22A. I direct my trustees to employ G. B., of, &c. (if he is able and willing to act), as their solicitor in all matters relating to probate of my will and administration of my estate. Solicitor.

[2] Compare the following form:—

24A. A sole trustee of this my will shall be competent to act for all the purposes of the Settled Land Acts as applied to this my will, and to exercise all other powers conferred by statute upon trustees. Sole trustee may act.

Form 208.

Indemnity. 26. My trustees may lend money upon the security of any hereditaments with less than a marketable title, without being responsible for any loss occasioned thereby [and they shall not be responsible for any loss which may be sustained by reason of any sale or any other arrangement pursuant to clause 15A or 16A hereof].

Guardians. 27. I appoint the said B. B. and D. B. guardians of my infant children after the death of my wife.

Marginal notes. 28. The marginal notes hereto shall not form part of or affect the construction of this my will.[1]

In witness, &c.

Form 209. Will of a Married Man giving Furniture, use of House, and Life Annuity to Wife, and settling Residue on Daughters and their Families.

Introduction. 1. I, A. B., of, &c., hereby revoke all testamentary dispositions heretofore made by me, and declare this to be my last will.

Executors and trustees. 2. I appoint my dear wife and my sons in law [*continue as in Form* 208, § 3, p. 529, *ante*].

Furniture, &c., to wife. 3. I bequeath to my said dear wife absolutely all my household furniture, consumable stores, wearing apparel, silver, silver plate, jewellery, trinkets, books, pictures, prints, ornaments, and other household effects which shall be in and about my dwelling-house at the time of my decease.[2]

Annuities. 4. I bequeath the following annuities duty free (namely):—

(*a.*) To my said dear wife an annuity of £1,000 per annum during her life, in priority to all other annuities hereby given.

(*b.*) To my sister, M. F., £5 per week during her life.

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[1] The following clauses are sometimes used:—

Marginal notes. 28A. The analytical notes in the margin hereof shall not be deemed part of this my will, or in any way affect the construction hereof.

Marginal notes. 28B. The notes or analysis in the margin of this my will shall not be deemed part thereof, or in any way affect the construction thereof.

[2] Compare Form 208, § 4.

(*c.*) To my sister, C. B., £5 per week during her life.

(*d.*) To my sister, E. H., £5 per week during her life.

Residuary gift.

5. I DEVISE, appoint, and bequeath [*continue as in Form* 208, § 6].

Trust of residence for wife for life.

6. MY trustees shall either permit my said dear wife to use and occupy my dwelling-house known as [*insert name and description*], now in my own occupation, during her life, she keeping the same in good repair and condition and insured against loss or damage by fire, or shall permit her, at her discretion, to receive the nett rents and profits thereof during her life, after payment thereout of the expenses of such repair and insurance as aforesaid.

Trust for sale and investment.

7. MY trustees shall (subject to clause 6 hereof) at such times and in such manner as they shall think fit [*continue as in Form* 208, § 7A].

Moiety of residue to daughter A. C. for life, or till alienation,

8. MY trustees shall, subject to the said annuities and to clause 6 hereof, pay the income of one moiety of my residuary estate (hereinafter called "the first moiety") to my daughter, A. C., for her separate use, without power of anticipation, during her life or until she (being discovert) shall do or suffer anything whereby such income or part thereof would, if belonging to her absolutely, become payable to some other person. And after the determination, during the life of my said daughter, of the trust aforesaid, shall, during the rest of her life, apply such income or any part thereof which they shall think fit for the maintenance, support, or benefit of all or any, to the exclusion of the others or other of the following objects, namely, my said daughter and her husband (if any) and her child or children for the time being in existence.

and after her death to her husband if she shall so appoint.

9. AFTER the determination of the interest of my said daughter under clause 8 hereof, and subject to the discretionary trust last aforesaid, my trustees shall, if my said daughter shall by her last will, or any codicil thereto, so direct (but not otherwise), pay the whole or such part of the income of the said moiety as my said daughter shall by will or codicil appoint or direct to any husband of my said daughter who may survive her during her life.

Capital of first moiety of residue to children and issue of A. C.

10. SUBJECT to clauses 8 and 9 hereof, my trustees shall hold the first moiety of my residuary estate in trust for the children living at her death of my said daughter A. C., and

Form 209.

living at her death.

the issue living at her death of such (if any) of her children as shall be then dead, leaving issue then living who (whether children or remoter issue of my said daughter) shall, either before or after her death, being male, attain the age of twenty-one years, or being female attain that age or marry in equal shares *per stirpes* as tenants in common.

Similar trusts for daughter S. A. H., and her family on failure of issue of A. C. living at her death.

11. If there shall be no issue of my said daughter A. C. who shall attain a vested interest under clause 10 hereof, my trustees shall, subject to clauses 6, 8, and 9 hereof, hold the first moiety of my residuary estate upon such trusts for the benefit of my daughter S. A. H., and her husband, children, and issue as shall most nearly correspond with those hereinbefore declared in favour of my said daughter A. C., and her husband, children, and issue.

Trusts of second moiety of residue for Mrs. H. and her family by reference.

12. My trustees shall hold the other or second moiety of my residuary estate upon such trusts in all respects in favour of my said daughter S. A. H., her husband, children, and issue as are hereinbefore declared concerning the first moiety thereof in favour of my said daughter A. C., her husband, children, and issue, such trusts being read, for the purpose of the said second moiety, as if the name of the said S. A. H. had been inserted therein throughout, instead of the name of the said A. C.

Ultimate trust of residue for surviving daughter, on failure of issue of both daughters.

13. If all the trusts hereinbefore declared in favour of the children and issue of my said two daughters shall fail during the life of the survivor of my two daughters, my trustees shall, after the failure or determination of all prior interests therein, hold the whole of my residuary estate in trust for such surviving daughter absolutely.

Power of maintenance.

14. My trustees may, at their discretion [*continue as in Form* 208, § 14, p. 533, *ante*].

Advancement.

15. My trustees may, in their discretion, from time to time, with the consent of the tenant for life thereof (if any), for the time being apply any part or parts, not exceeding in the whole one moiety of the capital of the share to which any minor shall be entitled under this my will, for the advancement, or otherwise for the benefit of such minor.

Power of investment.

16. My trustees may invest any moneys requiring or capable of investment under this my will [*continue as in Form* 208, § 19, 19A, *or* 19B].

17. My trustees may determine [*continue as in Form* 208, § 20]. Power to settle questions.

18. My trustees may at their uncontrolled discretion [*continue as in Form* 208, § 21]. Power to employ agents.

19. My trustees may lend [*continue as in Form* 208, § 26.] Indemnity.

20. The marginal notes [*continue as in Form* 208, § 28]. Marginal notes.

In witness, &c.

Form 209.

Will giving Real and Personal Estate to Trustees for the benefit of Testator's Wife and Children. Form 210.

1. This is the last will of me, A. B., of [*insert residence and description*]. Introduction.

2. I bequeath to my wife, C. B., absolutely, my wines, liquors, fuel, and other consumable household stores and provisions, linen, china, and glass, wearing apparel, watches, jewels, and personal ornaments. Consumable stores to wife.

3. I bequeath to my said wife, so long as she shall remain my widow, the use and enjoyment of my plate, plated articles, books, pictures, prints, musical instruments, furniture, and other articles of household use or ornament not hereinbefore bequeathed [[1]and after her decease or future marriage (which shall first happen) I bequeath the same to all my children or any my child who shall attain twenty-one years of age, and, if more than one, to be divided between them as nearly as may be in equal shares by my trustees, whose determination shall be final, and who shall have power conclusively to direct that any sums of money for equality of partition shall be paid by any one or more to any other of the persons becoming entitled to a share in the same effects]. Furniture to wife for life and then to children.

4. I bequeath to my said wife [£100] to be paid to her within one calendar month after my death. Pecuniary legacy.

5. I devise and bequeath all the residue of my real and personal estate unto R. S., of, &c., T. W., of, &c., and X. Y., of, &c., upon trust that they, or the survivors or survivor of them, or the executors or administrators of such survivor, Residue to trustee upon trusts after declared.

[1] If this clause were omitted, the furniture would fall into the testator's residuary estate, and be sold on the death or future marriage of his widow.

Form 210.

their, her, or his assigns, or other the trustees or trustee for the time being of this my will (all of whom are herein called "my trustees"), shall hold and deal with the same pursuant to the directions and with the powers hereinafter declared.

6. My trustees shall [*continue as in Form* 208, § 7A].

Investment: income to wife for widowhood, and then residue for children.

7. My trustees shall invest the residue of such proceeds in any of the investments hereinafter authorized, and shall pay the income thereof and of the said investments (hereinafter called "my trust fund") to my said wife so long as she shall remain my widow. And after her death or future marriage shall hold my trust fund upon trust for all my children or any my child who, either before or after my death, shall attain twenty-one years of age, and if more than one in equal shares.

Children of children dying under twenty-one to take parents' shares.

8. If any of my children shall die under the age of twenty-one years, and shall leave any child or children who, being male, attains the age of twenty-one years, or being female attains that age or marries, such child or children shall take the share in my trust fund to which his, her, or their parent would have been entitled if he or she had attained twenty-one.

Power of advancement.

9. My trustees may, with the consent of the tenant for life (if any), and if none, at their discretion, apply any part or parts (not exceeding altogether one half) of the then expectant, presumptive, or vested share of any infant in my trust fund, for or towards the advancement or benefit of such infant.

Power of maintenance.

10. Sect. 43 of the Conveyancing Act, 1881, shall apply to the income of any property to which any infant may be contingently entitled under this my will, whether such infant is contingently entitled to such income or not.

Investment.

11. My trustees may invest [*continue as in Form* 208, §§ 19, 19A, *or* 19B].

Real estate to be deemed converted.

12. My real estate [*continue as in Form* 208, § 17].

Income to be so treated.

13. The net income [*continue as in Form* 208, § 18].

Indemnity.

14. My trustees may lend [*continue as in Form* 208, § 26].

Executors and revocation.

15. I appoint the said R. S., T. W., and X. Y. executors of this my will, and I revoke all wills and testamentary dispositions heretofore made by me.

Marginal notes.

16. The marginal notes hereto shall not affect the construction hereof.

In witness, &c.

WILL OF A SCOTCHMAN DOMICILED IN ENGLAND IN FAVOUR OF WIFE AND CHILDREN—SHARES OF DAUGHTERS SETTLED AND MADE PAYABLE AT TWENTY-FIVE, THOUGH WIFE THEN LIVING. **Form 211.**

1. I, A. B., of, &c., being now domiciled in England, hereby revoke the trust disposition made by me on the [*date*], and all other wills and testamentary dispositions heretofore made by me, and declare this to be my last will. Introduction.

2. I CONFIRM the settlement made by me on the [*date*] in contemplation of my marriage, and declare that all benefits hereby given are in addition to, and not in substitution for, any benefit thereby conferred. Settlement confirmed.

3. I BEQUEATH to my wife, C. B., all my watches, jewels, ornaments of the person, wearing apparel, plate, plated articles, furniture, linen, glass, china, pictures, prints, musical instruments, books, and other articles of household use or ornament, horses, carriages, saddlery, harness, and stable furniture, live and dead stock, tools, implements, utensils, wines, liquors, and other consumable stores and provisions. Furniture, jewels, &c., to wife.

4. I BEQUEATH to my said wife the sum of £200, to be paid to her within one calendar month after my death. Immediate legacy to wife.

5. I DEVISE and bequeath all my real and personal estate (not hereby or by codicil hereto otherwise disposed of) unto and to the use of my said wife and C. D. and E. F. (all of whom, with the survivors and survivor of them, the executors or administrators of such survivor, or other the trustees or trustee for the time being of this my will, are hereinafter called "my trustees"), upon the trusts hereinafter declared. Residue to trustees.

6. MY trustees shall, with all convenient speed after my death [*continue as in Form* 208, § 7]. For sale, payment of debts and investment.

7. MY trustees shall, during the widowhood of my said wife, pay to her the annual income of one equal fourth part of my residuary estate, and of so much of the remaining three equal fourth parts thereof as shall not for the time being become payable or appropriated under clause 10 hereof, she maintaining thereout such of my children as shall be under the age of twenty-five years and shall reside with her. Income of one-fourth to wife during widowhood.

8. SUBJECT to clauses 7 and 11 hereof, my trustees shall hold my residuary estate in trust for such of my children as, either before or after my death, shall attain the age of Then to children at twenty-five or marriage (or issue).

Form 211.

twenty-five years, or, being daughters, attain that age or marry, and the issue of such of them as shall die under that age, leaving issue living at their respective deaths, and, if more than one, in equal shares *per stirpes* as tenants in common.

Advancement.

9. My trustees may, after the death or marriage of my said wife (which shall first happen), or previously thereto, if she shall so direct in writing [*continue as in Form* 208, § 13.]

Payment of three-fourths to children at twenty-five.

10. My trustees shall, as and when each son of mine shall attain the age of twenty-five years, raise and pay to such son such sum as, with any moneys previously applied for his benefit under clause 9 hereof, shall amount to three equal fourth parts of the then presumptive share of such son. And shall, as and when each daughter of mine shall attain the age of twenty-five years or marry under that age, set aside and appropriate for such daughter such sum as, with any moneys previously applied for her benefit under clause 9 hereof, shall amount to three equal fourth parts of the then presumptive share of such daughter, and shall hold the same upon the trusts declared in clause 11 hereof. Upon any sum of money becoming payable or appropriated under this clause, the right of my said wife to receive the income of such sum under clause 7 hereof shall determine.

Settlement of daughters' shares.

11. My trustees shall retain [*continue as in Form* 208, § 12A].

In default of children, for wife absolutely.

12. If no child of mine shall attain the age of twenty-five years, or (being a daughter) shall marry or shall leave issue living at his or her death, my trustees shall hold so much of my trust fund as shall not have been applied under any power hereby, or by statute, conferred on them, in trust for my said wife absolutely.

Investment.

13. My trustees may invest any trust money which shall come into their hands under this my will [*continue as in Form* 208, § 19, 19A, *or* 19B].

New trustees.

14. The power of appointing new trustees of this my will shall be exerciseable by my said wife during her widowhood.

Indemnity.

15. My trustees may lend [*continue as in Form* 208, § 26].

Questions.

Agents.

16. } [*Insert* §§ 20 *and* 21 *of Form* 208.]
17. }

Executors.

18. I appoint my said wife executrix, and the said C. D. and E. F. executors, of this my will.

Marginal notes.

19. The marginal notes [*continue as in Form* 208, § 28].

WILL OF A MARRIED MAN PROVIDING FOR WIFE AND CHILDREN, THE WIFE TAKING ONLY A SPECIFIED PROPORTION OF INCOME OF RESIDUE, AND THE SHARES OF DAUGHTERS BEING SETTLED. Form 212.

1. I, A. B., of, &c., hereby revoke all wills and testamentary dispositions heretofore made by me, and declare this to be my last will. Introduction.

2. I APPOINT [*continue as in Form* 208, § 3]. Trustees and executors.

3. I BEQUEATH the following pecuniary legacies :— Pecuniary legacies.

(*a.*) To my dear wife £100, to be paid within one calendar month after my death ;

(*b.*) To my brother, F. B., £50 ;

(*c.*) To each executor and executrix who shall prove and act in the trusts of this my will, £20 duty free.

4. I DEVISE, bequeath, and appoint [*continue as in Form* 208, § 6].

5. MY trustees shall [*continue as in Form* 208, § 7A]. Direction to convert, &c.

6. MY trustees shall pay to my said wife the income arising from two equal third parts in value of my residuary estate so long as she shall remain my widow ; and if she shall marry again, shall thenceforth during her life pay to her the income arising from one moiety in value of my residuary estate. To pay income of two-thirds to wife during widowhood ; then of one-half for life.

7. MY trustees shall, until the expiration of twenty-one years from my death, or until my youngest child shall attain the age of twenty-three years (whichever shall first happen), accumulate the income arising from the remaining one-third part or moiety, as the case may be, of my residuary estate, by investing the same at compound interest and adding the same to the principal of my residuary estate, but this direction shall not exclude the statutory power of maintenance. Trust to accumulate remaining income.

8. SUBJECT to the interest therein of my said wife under clause 6 hereof, my trustees shall hold my residuary estate with such accumulations as aforesaid in trust for such of my children as, being sons, shall attain twenty-one years of age, or, being daughters, shall attain that age or marry, in such shares that the share of my eldest child shall be double the share of every other child, and that such other children shall take in equal shares, subject nevertheless, as to the share Trust of residue for sons at twenty-one, and daughters at twenty-one or marriage. Share of eldest child to be double share.

Form 212.

of each daughter, to the directions contained in clause 10 hereof.

Advancement.

9. My trustees may [*continue as in Form* 208, § 13].

10. § 43 of the Conveyancing Act, 1881 [*continue as in Form* 210, § 10].

Shares of daughters settled.

11. My trustees shall retain the share of each of my daughters in my residuary estate, and shall invest the same in any of the investments hereinafter authorized, and shall [*continue as in Form* 208, § 12].

In default of issue, entire income to wife for life.

12. If there shall be no child of mine living at my death, who, being a son, shall attain twenty-one years, or, being a daughter, shall attain that age or marry, and leave a child or children who shall attain a vested interest under clause 11 hereof, my trustees shall, from and after such default or failure of issue as aforesaid, pay the income of the whole of my residuary estate and of the accumulations thereof to my said wife, and from and after her death shall hold my residuary estate with such accumulations as aforesaid in trust for such of my brothers as shall be then living in equal shares as tenants in common.

And after her death, residue to brothers.

Real estate to be deemed converted.

13. My real estate [*continue as in Form* 208, § 17].

Income to be treated as such.

14. The nett income [*continue as in Form* 208, § 18].

Investment.

15. My trustees may invest any moneys requiring or capable of investment under this my will [*continue as in Form* 208, § 19, 19A, *or* 19B].[1]

Sole trustee may act.

16. A sole trustee of this my will may exercise all powers conferred upon trustees by statute.

New trustees.

17. The power of appointing new trustees of this my will shall be vested in my said wife during her life.

Trustees' indemnity.

18. My trustees may lend money upon the security of any hereditaments with less than a marketable title without being responsible for loss occasioned thereby.

Marginal notes.

19. The marginal notes [*continue as in Form* 208, § 28].

In witness, &c.

[1] Insert here such of the following provisions as may be appropriate:—

(*a.*) Power to wind up business (Form 208, § 16).

(*b.*) Power to manage (Form 208, § 17A).

(*c.*) Power for interested trustee to act (Form 208, § 23).

(*d.*) Power to settle questions (Form 208, § 20).

(*e.*) Power to employ and pay agents (Form 208, § 21).

WILL OF A SPINSTER GIVING CHARITABLE AND OTHER LEGACIES—RESIDUE IN SPECIE TO TWO SUCCESSIVE TENANTS FOR LIFE, WITH POWER TO APPLY CAPITAL FOR THEIR COMFORT. **Form 213.**

Introduction. 1. I, A. B., of, &c., spinster, hereby revoke all my prior wills and testamentary dispositions, and declare this to be my last will.

Trustees and executors. 2. I APPOINT [*continue as in Form* 208, § 3].

Furniture. 3. I BEQUEATH all my watches [*continue as in Form* 208, § 4], to C. D., of, &c., spinster, and E. F., of, &c., spinster, in equal shares.

Pecuniary legacies. 4. I BEQUEATH the following pecuniary legacies :— [*Specify them, as in Form* 208, § 5.]

Charitable legacies. 5. I BEQUEATH to the vicar of X. and his successors £500, upon the trusts hereinafter declared, and to the Royal National Lifeboat Institution £1,000, with which to build and equip a lifeboat, to be called the "Rosie;" and I declare that the receipt of the said vicar for the time being, and of the treasurer or secretary for the time being of the said Institution respectively, shall be sufficient discharges for the said two legacies respectively.

Charge of debts, &c., on realty. 6. I CHARGE my real estate with the payment of all my debts, funeral, testamentary, and trust expenses in entire exoneration of my personal estate; and if my personal estate shall be sufficient to pay all the legacies hereby, and by codicil hereto, bequeathed, I direct that the same shall be paid out of my personal estate in exoneration of my real estate; but if my personal estate shall be insufficient for payment thereof in full, then I charge my real estate with the payment of all legacies given by me, except those mentioned in clause 5 hereof.

Residuary gift. 7. I DEVISE and bequeath [*continue as in Form* 208, § 6].

Trust for conversion. 8. MY trustees shall, at their discretion, raise by mortgage or charge of my residuary real estate, or temporarily appropriate out of my residuary personal estate (such appropriation to be deemed an investment made on the security of a charge on my residuary real estate), such a sum as shall be sufficient to pay my debts, funeral, testamentary, and trust expenses, and the legacies (if any) payable out of my real estate, and shall call in and convert into money such part of my residuary

Personalty.

Form 213.

personal estate as shall not consist of money or investments hereby authorized, and shall invest the proceeds thereof in any manner hereby authorized.

Income of residue.

9. My trustees shall pay the nett income arising from my residuary estate, after payment of all expenses of management and of interest on any mortgage or charge under clause 8 or 10 hereof, or of such part thereof as shall not have been applied under clause 10 hereof, to my sister, C. B., for her separate use, without power of anticipation, during her life, and, after her death, shall pay the nett income thereof to my cousin M. C., for her separate use, without power of anticipation, during her life.

Power to raise and apply capital.

10. My trustees may, during the life of my said sister, and, after her death, during the life of my said cousin, raise by sale or mortgage of my residuary real estate, or any part thereof, such sums as they in their uncontrolled discretion shall think fit, and apply the same for the purpose of increasing, as they shall think fit, the comfort and well-being of the person for the time being entitled to the income of my residuary estate.

Capital of residue.

11. Within six calendar months after the death of the survivor of my said sister and cousin, my trustees shall sell, call in, and convert into money the whole of my residuary estate, and shall, out of the proceeds of my residuary real estate, pay any sums of money charged thereon, including any money advanced by my residuary personal estate under clause 8 hereof, and such (if any) of my debts, funeral, testamentary, and trust expenses, and the legacies (if any) payable out of my real estate as shall not have been paid, and shall pay the balance of such proceeds to C. D., the wife of J. D., M. E., the youngest daughter of G. E., and R. F., the eldest daughter of W. F., in equal shares.

Remission of rents.

12. If at the death of such survivor any tenant of any then unsold real estate of mine shall have been in occupation thereof during the whole of the then preceding twelve years, my trustees shall not require or accept payment from any such tenant of the rent payable by him or her for the then current half-year on the next succeeding rent day, but the rent so payable by each such tenant shall be treated as a legacy bequeathed by me to such tenant, payable on such rent day out of the income of my residuary real estate, and the

legal personal representative of the last surviving tenant for life under clause 9 hereof shall not, under any Apportionment Act or otherwise, be entitled to any part of such rent or to any payment in respect thereof. **Form 213.**

13. I DIRECT that the vicar of X. shall invest the legacy hereinbefore bequeathed to him in any mode of investment hereby authorized, and shall hold the same upon trust to apply the annual income thereof in such manner as he shall in his absolute discretion think best for the benefit of such sick persons (whether poor or not) for the time being resident in the parish of X. aforesaid (who shall never have been inmates of a workhouse, or have received relief from the poor rates of any union), as he shall think proper. Trusts of legacy to vicar.

14. ANY moneys requiring or capable of investment under this my will may be invested in or upon [*continue as in Form* 208, § 19, 19A, *or* 19B]. Investment.

15. THE analytical notes [*continue as in Form* 208, § 28A]. Marginal notes.

IN WITNESS, &c.

TESTAMENTARY APPOINTMENT OF HUSBAND'S TRUST FUNDS PURSUANT TO A POWER IN HIS MARRIAGE SETTLEMENT. **Form 214.**

1. I, A. B., of, &c., hereby revoke all wills and other testamentary dispositions heretofore made by me, and declare this to be my last will. Introduction.

2. WHEREAS under the settlement [*date*], made in contemplation of my marriage with my dear wife, C. B. (hereinafter called "the settlement"), I have a general power of appointment in the event of there being no child of our said marriage who, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain that age or marry, over certain funds and property thereby settled (therein called "the husband's trust funds and property," and hereinafter called "my settled property"), subject to the life interest therein of my said wife. Recital of settlement.

3. Now, in exercise of the said power, I hereby appoint that the trustees for the time being of the settlement shall, in the event of there being no such child as aforesaid, stand possessed of my settled property (subject to the life interest therein of my said wife), upon the trusts and with and subject to the powers and provisions hereinafter contained. Appointment.

Form 214.

To brother if surviving.

4. If my brother, F. B., shall survive me, the trustees of the settlement shall hold my settled property in trust for my said brother absolutely.

If not, to his children at twenty-one, &c.

5. If my said brother shall not survive me, and shall have any child or children living at my death who, either before or after my death, shall, being male, attain the age of twenty-one years, or, being female, attain that age or marry, the trustees of the settlement shall hold my settled property in trust for such child or children, and if more than one, in equal shares as tenants in common.

In default, to wife absolutely.

6. If my said brother shall not survive me, and no child of my said brother shall become absolutely entitled to my settled property under clause 5 hereof, the trustees of the settlement shall hold my settled property in trust for my said wife absolutely.

Powers of trustees.

7. All powers by the settlement or by statute vested in the trustees of the settlement shall be exerciseable by them as trustees of this my will, and for the purpose of § 43 of the Conveyancing Act, 1881, any infant contingently entitled to any part of my settled property shall be deemed contingently entitled to the income thereof. The trustees of the settlement may, at their discretion, raise any part, not exceeding one moiety, of the property to which any infant may be contingently entitled under clause 5 hereof, and apply the same for his or her advancement or benefit.

Executors as to appointed property.

8. Inasmuch as the legal estate in part of my settled property is vested in me, I appoint the person or persons who upon the day of my death shall be trustee or trustees of the settlement, executor and executors of this my will so far and so far only as my settled property is concerned.

Unsettled property to wife absolutely.

9. Subject to the payment of my debts and funeral and testamentary expenses, I devise and bequeath all real and personal estate which I have power to dispose of (other than my settled property) to my said wife absolutely.

Wife executrix.

10. Except as to my settled property, I appoint my said wife sole executrix of this my will.

In witness, &c.

APPENDIX.

INSTRUCTIONS

To be sent to a Non-professional Person with a DEED FOR EXECUTION.

Instructions for Execution of the accompanying Deed.

SIGN the deed at the foot, in front, opposite the seal [and also under the receipt indorsed at the back] in the place where your name is written in pencil: place a finger on the seal and say, "I deliver this as my act and deed." A witness should see you sign the deed [and receipt] and should write his or her name, place of abode, and profession or calling, under the attestation at the back, where "Witness's name, &c.," is written in pencil [and should write his or her name only under the receipt where "Witness's name only" is written in pencil].

TESTIMONIUM[1] TO INSTRUMENT EXECUTED BY ATTORNEY.

IN WITNESS whereof the said A. B. has hereto set his hand and seal, and by virtue of a power of attorney enabling him in that behalf, a copy whereof is hereto annexed, has hereto set the hand and seal of the said C. D. this [*date*].

[1] A deed executed under a power of attorney must formerly have been signed in the name of the principal, thus:—

"C. D.
by A. B., his attorney,"

but an attorney may now act in his own name. See § 46 of the Conveyancing Act, 1881 (44 & 45 Vict. c. 41).

Preparation and Expense of Documents.

The following table shows by whom, and at whose expense, it is customary for various documents to be prepared, in the absence of any stipulation to the contrary.

Documents.	By whom prepared.	At whose expense.
Abstract of title	Vendor's solicitor.....	Vendor.
Agreement for purchase..	Vendor's solicitor.....	Vendor.
Appointment of new trustees.	Trustee's solicitor	Trust estate.
Assignment	Assignee's solicitor	Assignee.
Conditions of sale	Vendor's solicitor.....	Vendor.
Conditional surrender....	Mortgagee's solicitor	Mortgagor.
Conveyance	Purchaser's solicitor	Purchaser.
Counterpart of lease	Lessor's or lessee's solicitor ..	Lessor.
Disentailing deed	Tenant in tail's solicitor.....	Tenant in tail.
Enfranchisement deed ...	Steward of manor, or purchaser's solicitor.	Purchaser.
Lease.....	Lessor's solicitor	Lessee.
Marriage settlement of lady's property.	Wife's solicitor.....	Husband.[1]
Marriage settlement of gentleman's property.	Wife's solicitor (if he claims to do so).	Husband.
Mortgage	Mortgagee's solicitor	Mortgagor.[2]
Reconveyance, on mortgage being paid off.	Mortgagor's solicitor	Mortgagor.
Release	Trustee's solicitor	Trust estate.
Surrender	Purchaser's solicitor, or steward of the manor.	Purchaser.
Deed of covenants to accompany same.	Purchaser's solicitor	Purchaser.

[1] The husband's solicitor has no lien on the settlement for his costs. *Re Lawrance, Bowker* v. *Austin*, (1894) 1 Ch. 557.

[2] As to lien of a solicitor who acts for mortgagor and mortgagee, see *Re Snell*, 6 Ch. D. 105; *Mason* v. *Taylor*, 10 Ch. D. 729; *Re Lawrance, Bowker* v. *Austin*, (1894) 1 Ch. 557.

INDEX.

ABSTRACT,
analysis of, 58, 59.
comparing, with deeds, 31, 53.
complete, should be, 32.
open contract, under, 11.
perusing, 56—60.
preparation of, 19, 30.

ACCOUNTS,
costs of furnishing, 205.
trustees must keep, 205.

ACKNOWLEDGMENT,
certificate of, by married woman, **298**.
deeds, as to, **294**.
married woman, by, 70.

ADMINISTRATION,
advertisements for creditors, **207**, **208**.
decision of questions, 204.
rights of intestate's widow, 206.

ADVANTAGE
of marginal notes, 5.

AFFIDAVITS,
bill of sale, on registration of, **209**, **210**.
on re-registration of, **211**.
satisfaction of, **211**.
distringas, in lieu of, **209**.

AGENT,
agreement appointing, **228**, **231**, **233**.

AGREEMENT,
agent, appointing, **228**.
agent, *del credere*, appointing, **231**.
agent and patentee, between, **233**.
arbitration, as to, **215**, **250**, **251**.
arbitration, for reference to, **250**, **251**.
arbitration clause, **215**.
brewer and collector, between, **224**.
completion of, 7.
consulting engineer, appointing, **215**.

N.B.—References to the Forms are printed thus—**246**.

AGREEMENT—*continued.*
determination of, 213, 217, 220, 222, 224, 225, 227, 230, 233—235, 241.
determining tenancy, 465.
drafting, 4.
engrossment of, 8.
equitable interest transferred by, 3.
hire of furniture, 253.
pottery plant, 255.
trade machinery, 257.
instructions for, 2.
lease, for, 268.
manager, appointing,
bleaching works, 222.
colliery, 217.
fireclay works, 220.
manufacturer and son, between, 212.
marginal notes useful, 5.
milk, for supply of, 246.
mortgage, for, 269, 468.
organ-building, for, 247.
personal service, for, 212 *et seq.*
preparation of draft, 4.
professional skill necessary, 1.
release of annuity, 248.
restricting trade, 221, 228, 235, 237, 242, 244.
right of way, as to, 248.
salary, 213, 215, 225, 227, 230, 232, 237.
sale,
after abortive auction, 274.
British ship, 271.
business, 259, 261.
by letters, 272.
freehold farm, 278.
freehold house, 275.
freeholds subject to rent, 280, 282.
land (short), 273.
leasehold house, 276.
leasehold land, 273.
leasehold manufactory, 284.
public-house, 287.
rentcharge, for, 274.
stamps on, 21.
solicitor and client, between, 237, 239.
solicitor acting for all parties, 3, 7.
stage-play, for production of, 244.
stamps on, 8.
subject to sanction of Court, 259.
tenancy, for, 427—431, 441, 459, 461, 463.
traveller, appointing, 226.
travelling, as to, 221, 223.
vendor and purchaser trustees in equity, 3.
words of covenant unnecessary, 6.
written, when necessary, 2.

AGRICULTURAL LAND. *And see* FARM.
tenancy agreement, 441.

---

*N.B.—References to the Forms are printed thus—***246.**

ANNUITY,
agreement for release of, **248.**

APPOINTMENT,
gamekeeper, **293.**
share of residue, **288.**
surveyors under L. C. C. Act, **293.**
trustees,
indorsement, by, **290.**
settlement of, **290.**
will of, **289.**

APPRENTICESHIP INDENTURE, **242.**

ARBITRATION,
agreement for reference to, **250, 251.**

ARTICLES OF CLERKSHIP, **241.**

ASSENT TO LEGACY, **294.**

ASSIGNS,
when mentioned in covenants, 7.

ATTORNEY,
testimonium to deed executed by, **551.**

AUCTION,
particulars, 23, 24.
preparation for, 21, 22.
remuneration of solicitor, 22, 30.
sale by, 29.

BANKING COMPANY,
equitable mortgage to, **481.**

BANKRUPT,
after-acquired property, **16.**

BILL OF SALE,
affidavits of execution of, **210, 211.**

BILLS OF SALE ACTS, 87, 89.

BOND,
collector of brewery, by, **295.**
common money, **295.**
for replacing stock, **296.**
memorandum of discharge of, **297.**

BOOK DEBTS,
assignment of, **408.**

BREWER AND COLLECTOR,
agreement between, **224.**

BRITISH SHIP,
agreement for sale of, **271.**

---

*N.B.—References to the Forms are printed thus—***246.**

BUILDING,
conditions of letting for, **450.**
covenants as to, **454.**
lease, **452.**

BUILDING SOCIETY,
conveyance by, **359.**
further charge to, **480.**
mortgage of leaseholds to, **476.**
mortgage to, 82.

BURIAL GROUND,
conveyance of land for, **376, 377**

BUSINESS,
agreement for sale of, **259, 261.**
assignment of goodwill, **407.**

CERTIFICATE,
acknowledgment by married woman, **298.**

CHATTELS,
after-acquired,
mortgage, 86.
settlement, 86.

COMPLETION,
agreement, 7.
contract for sale, 21.
lease, 119, 127.
mortgage, 100.
purchase, 37, 77.
purchase of copyholds, 139.

CONDITIONS OF SALE,
advising purchaser on, 49.
clauses in,
abstract,
at purchaser's expense, **314, 315.**
commencement of, **302, 312, 324, 331, 338, 343, 344.**
delivery of, **300, 311, 323, 338, 343.**
short for small lots, **315.**
biddings, **299, 300, 323, 337.**
buildings, **305, 306, 310.**
cestui que vie, age of, **335.**
Chancery proceedings, **303, 316, 338.**
change of name, **327, 328, 333.**
compensation, **299.**
completion, **299, 302, 319, 323, 329, 337, 342, 345.**
contract, form of, **331.**
conveyance, form of, **302, 303, 340.**
copyholds and freeholds intermixed, **317.**
deeds, **304, 320, 330, 333, 337, 341.**
default, **304, 321, 330.**
deposit, **299, 300, 310, 323, 337.**
description, **317.**
disputes, **310.**

N.B.—References to the Forms are printed thus—**246.**

CONDITIONS OF SALE—*continued.*
clauses in—*continued.*
dower, 316, 324.
easements, 302, 318, 327, 339, 340.
evidence of ages, 335, 344.
fences, 306, 307, 308.
fixtures, 309, 310, 328, 329.
ground-rents, title to, 321.
identity, 299, 302, 322, 327, 333, 339.
incumbrances, 319.
interest, 304, 320, 330.
intestacy and heirship, 345.
land tax, 300.
leaseholds,
mesne assignments, 332.
underlease, 332.
leases,
comprising other property, 335
licence to assign, 336.
operating as assignment, 336.
production of, 321, 334.
surrender of, 335.
loss of deeds, 322.
lots, alteration of, 310.
minerals, 310.
misleading, 51.
mistake as to root of title, 317.
mortgagee, assignment by, 333.
mortgage to bank trustees, 322.
to building society trustees, 322.
outgoings and rents, 320, 330.
plans, 309.
possession, 299, 304, 330.
production of deeds, 321, 333.
recitals evidence, 316.
registration of deeds, 325.
release from restrictions, 310.
requisitions, 299, 300, 311, 323, 334, 338.
reservation of rights, 299, 340.
rights of way, 305.
extinction of, 327.
roads, 305, 307.
stamps, 302, 316, 327.
tenancies, 299, 309, 318, 340.
tithe rentcharge, 309, 316.
title, commencement of, 299, 301.
episcopal lease, 301.
parish property, 313.
will, under, 313, 314.
trades, restriction of, 306.
trustees, sale by, 303.
underlease, surrender of, 325.
voluntary settlement, 319.
deeds, as to, 27.
defects, specifying, 27, 51.
freehold ground rents, 321.
freehold house, 323.

N.B.—References to the Forms are printed thus—**246.**

CONDITIONS OF SALE—*continued.*
freeholds and copyholds, **310.**
freeholds formerly leaseholds, **325.**
freeholds in lots, **300.**
leasehold house, **331.**
leaseholds in lots, **334.**
by Chancery Division, **337.**
local Law Society, of, 28.
preparation of, 24.
printing, 28.
rescission, 61.
reversionary interest, **343.**
short form, **299.**
stringent, 25.
usually required, 26.

CONFIRMATION,
deed of, by married woman, **410.**

CONSULTING ENGINEER,
agreement appointing, **215.**

CONTRACT. *See* VENDOR AND PURCHASER.

CONVEYANCE,
acknowledgment as to deeds, **375.**
appointment and grant, **354.**
approval of draft, 75.
beneficial owner, as, 36.
book debts, **408.**
building society, by, **359.**
copyholds
and freeholds, **389.**
covenant to surrender, **386.**
covenants for title to, **388.**
enfranchisement, **390.**
surrender, **387.**
covenant,
for further assurance, **377.**
for title, **375.**
not to build, **379.**
that infant will convey, **369.**
to observe restrictions, **365.**
to pay mortgage debt, **367, 401.**
to pay rent, &c. (leaseholds), **393.**
to pay rent charge, **356, 357, 382.**
drafting, 35, 64.
engrossment, 76.
equity of redemption, **366, 401.**
execution of, 78.
form of, 75.
freehold cottage, **347.**
freehold farm under S. L. Act, **352.**
part of, **349.**
freehold land (concise form), **346.**
freehold land (minerals reserved), **355.**
freeholds
and copyholds, **389.**
by indorsement, **349.**

N.B.—References to the Forms are printed thus—**246.**

CONVEYANCE—*continued.*
freeholds—*continued.*
for burial ground, **376**, **377**.
for pleasure ground, **378**.
on partition, **372**, **373**.
subject to rentcharge, **355**, **357**.
to county council, **379**.
to district council, **378**.
to uses of settlement, **369**.
goodwill of business, **407**.
grant of rentcharge, **381**.
grant of rights of common, **391**.
leaseholds,
by independent deed, **392**.
by indorsement, **393**.
by mortgagee,
under express power, **395**.
under statutory power, **397**.
by mortgagor and mortgagee, **394**.
equity of redemption, **401**.
further assurance of, **399**.
life interest in freeholds, **374**.
mortgagee, by, under express power, **362**.
mortgagee, by, under statutory power, **367**.
mortgagee's executors, by, **363**.
mortgagor and mortgagee, by, **359**, **361**.
municipal corporation, by, **385**.
parties, 65.
policy of assurance, **402**, **405**.
recitals, 72. *And see* RECITALS.
reservation of easements, **356**.
reservation of minerals, **355**.
reversionary interest, **403**, **405**.
right to lay pipes, to corporation, **382**.
sewer to district council, **380**.
tenant for life, by, 66.
tenants in common, by, **367**.
words of limitation, 74.

COPYHOLDS,
admittance, 140.
completion of purchase, 139.
corporations, purchase by, 142.
covenant to surrender, **386**.
descent, customs as to, 133.
disclaimer by trustees, 188, **422**.
enfranchisement, 143, 144.
fines, payable by trustees, 141, 183.
inquiries, 132, 133.
leases, 113, 124.
mode of transfer, 130.
mortgage of, 99, **473**, **474**.
requisitions, 134.
searches, 132.
surrender, drafting, 137, **387**.

COSTS,
conveyance to railway company, 41.

N.B.—References to the Forms are printed thus—**246**.

COSTS—*continued.*
disclaimer, 188.
lease, of, 120.

COTTAGE,
tenancy agreement, **431**.

COUNTY COUNCIL,
conveyance to, **379**.

COVENANTS,
assigns, when mentioned, 7.
building, as to, **454**.
by purchasers as to buildings, **414**.
deed of, by riparian owners, **417**.
for production of deeds, **413**.
heirs bound, if by deed, 6.
incumbrances, against, **412**.
notice of breach of, **497**.
roads, as to, **454**.
trade, restrictive of, **435**, **439**, **457**, **458**. *And see* AGREEMENTS.
when implied, 73.

DECLARATION,
statutory, **420**.

DEED OF ARRANGEMENT, **261**.

DEEDS,
acknowledgment as to, 37, 74, **294**, **375**.
covenant for production, **413**.

DISCLAIMERS, 187.
registration, 188.
stamps, 188.
trustee, by, 188, **421**, **422**.

DISENTAILING DEEDS, 172.
form of, **423**.
stamps, 174.

DISTRICT COUNCIL,
conveyance to, **378**.

DISTRINGAS,
affidavit in lieu of, **209**.
notice in lieu of, **494**.

DOCUMENTS,
preparation and expense of various, 552.

DRAFTING,
agreement, 4.
agreement for lease, 114.
conditions of sale, 25.
contract for sale, 19.
conveyance, 35, 64.
lease, 117.

N.B.—References to the Forms are printed thus—**246**.

DRAFTING—*continued.*
mortgage, 94.
partnership deed, 147.
requisitions, 60.
surrender, 137.
wills, 183.

EASEMENT,
grant of, **380**, **382**.
reservation of, **356**.

ENFRANCHISEMENT,
deed of, **390**.

ENTAIL,
barring, 172—174.
copyholds, 133.

EQUITABLE INTEREST,
transferred by agreement, 3.

EQUITABLE MORTGAGE,
banking company, to, **481**.
concise form, **468**.

EQUITY OF REDEMPTION,
conveyance of, **366**, **401**.

ESTATE DUTY, 189 *et seq.*
"an estate by itself," 190.
heirlooms, 193.
interest on, 192.
liability for, 191, 192.
"one estate," 189.
power to remit, 193.
rates of, 191.
return of overpaid, 203.
"small estates," 190, 193.
when Commissioners may determine rate, 192.
when payable, 192.

EXECUTION OF DEED,
instructions for, **551**.

EXECUTORS,
acting before probate, 204.
advertisement for creditors, 206, **207**.
assent to bequest of leaseholds, **294**.
liability as to leaseholds, 206.

EXTENSION OF LEASE, **466**.

FARM,
lease of large, **445**.
small, **443**.
tenancy agreements, **441**.
determination of, **465**.
terms of letting on back of rent receipt, **442**.

N.B.—References to the Forms are printed thus—**246**.

FOOTBALL GROUND,
tenancy agreement, **459**, **461**.

FREEBENCH,
customs as to, 133.

FREEHOLD FARM,
agreement for sale of, **278**.

FREEHOLD HOUSE,
agreement for sale of, **275**.

FREEHOLDS,
agreement for sale subject to rent, **280**, **282**.

FURNISHED HOUSE,
tenancy agreement, **427**.

GAMEKEEPER,
appointment of, **293**.

GOLF LINKS,
tenancy agreement, **463**.

GUARANTEES,
mortgage debt, of, **425**.
rent, of, **426**.

HARES AND RABBITS,
tenant may kill, 445.

HIRE-PURCHASE AGREEMENTS, **253**, **255**, **257**.

HOUSE,
lease of, **437**.
in town, **433**.
public, **438**.
mortgage of, **469**.
tenancy agreements, **427**, **428**, **430**, **431**.

INDEMNITY,
trustees, to, by legatee, **426**.

INFANT,
lease by, 109.

INSTRUCTIONS,
agreement for, 2.
for execution of deed, **551**.

INVESTMENT,
powers of, **525**, **535**, **536**.

JUDICIAL TRUSTEES, 167.

N.B.—References to the Forms are printed thus—**246**.

LANDLORD AND TENANT,
covenant, release from, **515.**
notice,
breach of covenant, **497.**
nuisance, to abate, **496.**
to quit, **494**, **495**, **496.**
to repair, **497.**

LANDS CLAUSES CONSOLIDATION ACT,
appointment of surveyors under, **293.**
conveyance under, 41, 66.

LEASE,
agreement for, 114, **268.**
agricultural land from year to year, **441.**
building, **452.**
building, conditions for, **450.**
counterpart, 126.
country house, **427.**
completion, 119, 127.
copyholds, 113.
costs, 120.
covenant against assignment, 41, 122.
cricket ground, **459.**
drafting, 117.
duties of lessee's solicitor, 120.
duties of lessor's solicitor, 109.
extension of, by indorsement, **466.**
farm,
concise form, **443.**
cottages, with, in Yorkshire, **445.**
determination of, **465.**
large, **445.**
small, **443.**
terms of letting printed on receipt, **442.**
forfeiture, relief against, 61, 125, 126.
football ground, **459**, **461.**
golf links, **463.**
lessor's title on granting, 114, 115.
licence to assign, **467.**
licence to permit sale by auction, **467.**
married woman, by, 110.
mining, 124.
mortgagee, by, 112.
mortgagor, by, 111.
notice determining, **496.**
outgoings, covenants as to, 116.
perusing draft, 121.
power to determine mining, 124.
power, under, 117.
public-house, **438.**
registration, 128.
renewal by indorsement, **466.**
settled estates, 110.
special stipulations in, 115.
surrender of, **464.**
town house, **433.**
usual covenants in, 117, 118.

N.B.—References to the Forms are printed thus—**246.**

LEASEHOLD HOUSE,
agreement for sale of, **276.**

LEASEHOLD MANUFACTORY,
agreement for sale of, **284.**

LEASEHOLDS,
agreement for sale of, **273.**
assignment of, **392—399.**
liability of executors, 206.
mortgages of, **475, 476.**

LEGACY DUTY,
payment of, 198.
when not payable, 200.

LEGACY RECEIPTS, 205.

LEGAL ESTATE,
conveyance by legal personal representative, 65.

LETTERS,
agreement for sale by, **272.**

LICENCE,
to assign lease, **467.**
to permit sale by auction, **467.**

LIFE INTEREST,
conveyance of, **374.**

MALINS' ACT, 176.

MANAGER,
agreement appointing, **217, 220, 223.**

MARGINAL NOTES,
advantage of, 5.

MARRIED WOMAN,
acknowledgment of deeds by, 173—176.
bare trustee, conveyance by, 177.
contracts bind separate estate, 178.
deed of confirmation by, **410.**
lease by, 110.
policies under M. W. P. Act, 179.
powers of alienation, 69—72.
reversionary interest, 176.
separate property of, 178.
separate use, 177.
trustee, conveyance by, 177.

MILK,
agreement for supply of, **246.**

MINERALS,
reservation of, **355.**

N.B.—References to the Forms are printed thus—**246.**

MORTGAGEE,
must produce deeds, 95.
powers of, 96.
statutory powers, 34.

MORTGAGES,
advising on title, 81.
acting for mortgagee, 81.
acting for mortgagor, 79.
agreement for, **269.**
agreement to execute, **468.**
banking company, to, **481.**
bills of sale, 86.
building society, to, 82, **476.**
further charge to, **480.**
chattels, 86—89.
clogging redemption, 98.
completion, 100.
Conveyancing Act, under, **472.**
copyholds, 99.
admittance, 140.
covenant to surrender, **473.**
satisfaction of, **474.**
surrender, **474.**
costs, 101.
of reconveyance, 102.
drafting, 94.
equitable,
short, **468.**
to banking company, **481.**
executors, by, to pay debts, 79.
freehold house to one person, **469.**
freeholds, 83.
freeholds (short form), **472.**
further charge, **480.**
guarantee of, **425.**
house property, 83.
insurance of, 101.
leaseholds, 84.
by demise, **475, 476.**
to building society, **476.**
legacy, notice of, **498.**
life interests, 87.
life policy, **482.**
notice of, **498.**
loan to remain for fixed period, **469.**
mills, mines, &c., 85.
notice by second to first, **499.**
of intended sale, **499.**
of intention to repay, **500.**
to tenant to pay rent, **499.**
payment into Court under Trustee Act, 105.
policy of assurance, 88.
power of sale, 96.
to appoint receiver, 97.
to charge for services, **469.**
to cut timber, 97.

N.B.—References to the Forms are printed thus—**246.**

MORTGAGES—*continued.*
power to give receipts, 104.
to insure, 96.
to lease, 97.
public-house, 85, **486.**
reconveyance, 101, **491.**
reversionary interest, 87, **483.**
notice of, **498.**
sale under power, 103.
securities enumerated, 83.
tenant for life, 80.
transfer, 105, **491.**
trustees, by, 89—92.

MUNICIPAL CORPORATION,
conveyance by, **385.**

NOTICES,
abate nuisance, to, **496.**
assignment of policy, of, **498.**
breach of covenant, of, by lessor, **497.**
change in partnership, **492.**
claim to furniture, to high bailiff, **493.**
determining partnership, **492.**
determining lease, **496.**
dissolution of partnership, **492.**
distringas, in lieu of, **494.**
lessee, to, to abate nuisance, **496.**
to repair, **497.**
mortgage of legacy, of, **498.**
mortgagee,
by second to first, **499.**
by, to tenant to pay rent, **499.**
by, of intended sale, **499.**
mortgagor, by, of intention to pay off, **500.**
nuisance, to abate, **496.**
policy, assignment of, **498.**
quit, to,
landlord, by, **494, 495.**
tenant, by, **496.**
repair, to, **497.**
settlement, of, 167.

NUISANCE,
notice to abate, **496.**

OPEN CONTRACT,
rights under, 44, 45.

ORGAN,
agreement for building, **247.**

PARTITION DEEDS, **372, 373.**

---

*N.B.—References to the Forms are printed thus—***246.**

PARTNERSHIP,
acting for—
all partners, 146.
firm, 149.
new partner, 149.
single partner, 148.
change in firm, notice of, **492.**
deed of, **501, 503.**
dissolution,
by death, 151.
deed of, **509.**
inter vivos, 151.
notice of, **492.**
drafting deed of, 147.
loan to firm, 152.

PERSONAL SERVICE,
agreements as to, **212** *et seq.*

PLEASURE GROUNDS,
conveyance to district council for, **378.**

POLICY OF ASSURANCE,
assignment of, **402, 405.**
notice of assignment of, **498.**

POWER. *And see* WILLS.
lease under, 117.
settlements, in, 156, 157.
two witnesses sufficient, 55.

POWER OF ATTORNEY,
business, to manage, **512.**
debt, to recover, **512.**
deed, to execute, **511.**
execution of deed under, **551.**
married woman, by, 71.

PREPARATION AND EXPENSE OF DOCUMENTS, 551.

PRESENTATION TO BENEFICE, **514.**

PUBLIC HOUSE,
lease of, **438.**
mortgage of, **486.**

RAILWAY COMPANY,
copyholds, purchase of, 142.
costs of purchase by, 41.

RECEIPTS,
trustees and mortgagees, 67, 68.

RECITALS,
agreement
for further assurance, **400.**
for mortgage, **469.**

---

*N.B.—References to the Forms are printed thus—***246.**

RECITALS—*continued.*
agreement—*continued.*
for partition, **373.**
for sale, **354, 360, 361, 363, 388, 392, 393.**
appointment of trustees, **371.**
conveyance, in, 72.
conveyance in fee simple, **370.**
conveyance to dower uses, **354.**
death and probate, **364, 374.**
further charge, **396.**
intended marriage, **521.**
intestacy and administration, **364.**
investment of purchase-money, **368.**
lease, **392.**
limitations of settlement, **352.**
lord's title, **390.**
mortgagee to concur, **362.**
mortgage debt, **361, 362, 396.**
mortgage in fee simple, **359.**
mortgage of leaseholds, **394, 395, 361, 363.**
policy of assurance, **402, 405.**
resolution of county council to purchase, **379.**
seisin, **370.**
settlement, **370.**
title,
in fee simple, **347, 349, 373.**
of corporation, **385.**
of tenant for life, **377.**
to book debts, **408.**
to copyholds, **390.**
to lease, **350, 392.**
trustees with power of sale, **352.**
twenty years old, evidence, 13, 14.
will, **364, 367, 374, 403.**

REGISTRATION,
conveyance, 78.
disclaimer, 188.
lease, of, 128.
open contract, under, 12.
settlement, 158.
will, 206.

RELEASE,
covenant, from, **515.**
covenant for production, from, **529.**
dower, of, **515.**
executors, to, by residuary legatee, **516.**
trustees of settlement, to, **517.**

RENEWAL OF LEASE, **466.**

RENTCHARGE,
grant of, **381.**

REQUEST,
to register stock, **520.**
to sell stock for loan, **520.**

N.B.—References to the Forms are printed thus—**246.**

REQUISITIONS. *See* VENDOR AND PURCHASER.
copyholds, 134.
drafting, 60.

RESERVATION,
minerals, **453.**
water in well, **453.**

RESIDUE,
appointment of share, **288.**

REVERSIONARY INTEREST,
assignment of, **403, 405.**
mortgage of, **483.**

RIGHT OF WAY,
agreement as to, **248.**

RIVER,
deed to preserve purity of, **417.**

ROADS,
covenants as to, **454.**

SALE,
agreements. *See* AGREEMENTS.

SEARCHES,
copyholds, 132.
copyhold enfranchisement, 144.
purchaser, by, 63.

SETTLED LAND ACTS,
leases, 110.
mortgage under, 80.
purchase-money, under, 39.
sale of mansion, 17.
tenant for life,
married woman, 18.
sales by, 17.
who is, 16.
trustees under, 17.

SETTLEMENT,
custody of deeds, 169.
infants, by, 156, 157.
marriage, 154.
notice of, 167.
personalty, of, **522.**
advancement, 164.
beneficial trusts, 162.
bonds, 160.
cash, 159.
furniture, 161.
investments, 162.
life policy, 160.
maintenance, 164.
miscellaneous provisions, 164.

N.B.—References to the Forms are printed thus—**246.**

SETTLEMENT—*continued.*
personalty, of—*continued.*
mortgage debt, 162.
powers in, 165, 166.
promissory notes, 160.
shares, 160.
stock, 159.
real estate, of, **521.**
powers unnecessary, in, 156.
trust for conversion, 157.
strict, 154.
registration, 158.
stamps, 171.
voluntary, 169.

SETTLEMENT ESTATE DUTY, 192, 193.

SOLICITOR,
agreement as to remuneration, **237, 239.**

STAGE PLAY,
agreement for production of, **244.**

STAMPS,
agreement, 8.
contract for sale, 21.
disclaimer, 188.
disentailing deeds, 174.
lease, 129.
open contract, under, 12.
reconveyances, 107.
settlement, 171.

STATUTORY DECLARATION, **420.**

SUCCESSION DUTY,
charge on land, 200.
difficulties, how disposed of, 202.
how payable, 201.
payment of, 200—202.
protection of purchasers, 201.

SURRENDER OF LEASE, **464.**

TENANCY AGREEMENTS, **427—431, 441, 459, 461, 463.**
determination of, **465.**
substitution of new tenant, **465.**

TENANT FOR LIFE. *And see* SETTLED LAND ACTS.
covenants for title, 74.
manor, licence to lease, 113, 124.
mortgage by, 80.
who is, under Settled Land Act, 16.

TENANTS IN COMMON,
conveyance by, **367.**

TITHE RENTCHARGE,
payable by owner, 116.

N.B.—References to the Forms are printed thus—**246.**

TRADE,
clauses restrictive of, **221**, **228**, **235**, **237**, **242**, **244**, **407**.
covenants restrictive of, **435**, **439**, **457**, **458**.

TRAVELLER,
agreement appointing, **226**.

TRUSTEES. *And see* WILLS.
accounts,
cost of furnishing, 205.
must keep, 205.
appointments of, **289**, **290**.
decision of questions, 204.
devise of trust estate improper, 185.
disclaimer by, **421**, **422**.
fines on admittance to copyholds, 141, 183.
indemnity by legatee, **426**.
judicial, 167.
legal estate, on death, 166.
married woman, 71.
mortgages by, 89—92.
payment into Court by mortgagee, 105.
powers of (*see* WILLS),
appointing new, 165.
compromise, 166.
disclaimer of, 166.
investment (statutory), 90.
investment on real security, 92.
receipts, to give, 165.
sale, 68.
purchase-money payable to, 39.
"real security," investment on, 92.
receipts by, 67.
release to, 205, **517**.
relief from breaches of trust, 167.
request to, to sell stock, **520**.

VENDOR AND PURCHASER,
completion, 37, 77.
conveyance, 64—76.
purchaser entitled to own form, 35.
contract,
by letters, 45—47.
drafting, 19.
rights to be reserved, 20.
copies of court roll, 135.
copyholds,
conveyance, 136.
described as freeholds, 23.
duties of purchaser's solicitor, 43.
vendor's solicitor, 47.
estate and succession duty, 63.
insurance, 52.
interest, 39—78.
lease, under-lease described as, 23.
misdescription, 24.
onerous covenants, 24.

N.B.—References to the Forms are printed thus—**246**.

VENDOR AND PURCHASER—*continued.*
open contract, 10, 44.
cost of verifying abstract, 12, 13.
rights under, 12—14.
payment to solicitor, 78.
private contract, 7.
perusal of, for purchaser, 47, 48.
replies to requisitions, 31.
rescission, 61.
sales by limited owners, 15, 16.
searches, 63.
signature of contract at auction, 30.
stringent conditions by trustees, 25.
surrender, drafting, 137.
voluntary conveyance, 35.

VOLUNTARY SETTLEMENT, 35, 169, 171.

WILLS,
annuities, **538.**
appointment of executors and trustees, **529.**
of settled fund, **549.**
of specified fund, **550.**
charge of debts on real estate, **547.**
charitable gifts, 184.
charitable legacies, **547.**
conversion, trust for, **530, 547.**
copyrights, direction for sale of, **534.**
devise of trust estate, improper, 185.
directions as to burial, **529.**
drafting, 183.
execution, 186.
furniture, gifts of, **529, 538, 541, 543.**
guardians, appointment of, **538.**
income to be so treated, **535.**
instructions for, 180.
marginal notes, **529, 538.**
payment of debts and legacies, 184.
pecuniary legacies, **529, 541, 543, 545.**
powers,
advancement, **533, 540, 542, 550.**
agents, to employ, **537.**
apportionment of blended funds, **536.**
building, management, &c., **535.**
business, to wind up, **534.**
capital, to pay to life tenant, **548.**
conversion, to postpone, **533.**
desirable, 185.
indemnity to trustees, **538, 546.**
interested trustee acting, **537.**
investment, **535, 536.**
maintenance, **533, 542, 550.**
new trustees, to appoint, **537.**
professional trustee, to pay, **537.**
settle questions, to, **536.**
sole trustee acting, **537.**

N.B.—References to the Forms are printed thus—**246.**

WILLS—*continued.*
professional skill required, 180.
proving, 189, 194, 196.
real estate to be deemed converted, **534.**
registration, 206.
remission of rents, **548.**
residuary gift, **529.**
to trustees, **530, 541, 543.**
revocation clause, **529.**
rights on intestacy, 206.
settlement,
confirmation of, **543.**
daughter's shares, **532, 539.**
recital of, **549.**
short, for case of emergency, **527.**
solicitor, direction to employ, **537.**
special provisions as to share of grandchild, **531.**
statutory powers, 184, 185.
trustees. *And see* TRUSTS AND POWERS.
appointment of, **529.**
trusts,
accumulation for, **545.**
capital, double share to eldest son, **545.**
for brothers, **531, 546, 550.**
for children and grandchildren, **531.**
for children at twenty-five, **543.**
for children at twenty-one or marriage, **531, 545.**
for children of deceased children, **542.**
for daughters' children, **539.**
for nephew, **531.**
for nephews and nieces, **550.**
for strangers, **548.**
for surviving daughter, **540.**
for wife in default of children, **544.**
for wife in default of nephews and nieces, **550.**
conversion, payment of debts, &c., **530.**
daughters' shares, of, **532.**
income for daughters in moieties, **539.**
for daughter's husband, **539.**
for sister for life, **548.**
for wife for life, **531.**
for wife during widowhood, **541.**
for wife (as to one-quarter), **543.**
for wife (as to two-thirds), **545.**
for wife in default of children, **546.**
poor of parish, for, **549.**
residence for wife, **539.**
to pay three-quarters of shares to children, **544.**
widower of, **528.**
wife, in favour of, **527.**

N.B.—References to the Forms are printed thus—**246.**

Pt cat A
89

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